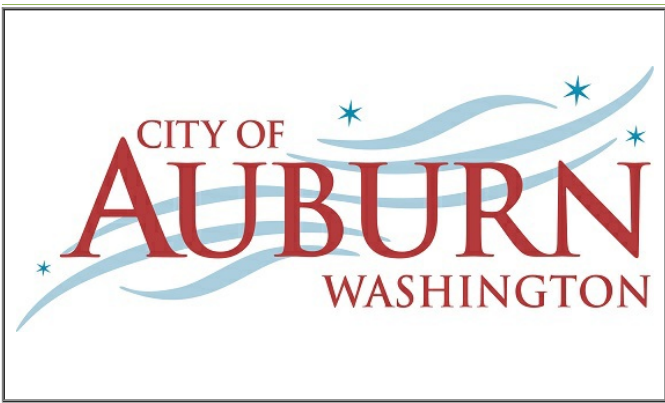


	City Council Study Session Community Wellness Special Focus Area July 13, 2020 - 5:30 PM VIRTUAL AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. Virtual Participation Link

A. Virtual Participation Link

The Auburn City Council Study Session Meeting scheduled for Monday, July 13, 2020 at 5:30 p.m. will be held virtually and telephonically. To attend the meeting virtually please click the link or enter the meeting ID into the Zoom app or call into the meeting at the phone number listed below.

Per the Governor's Emergency Proclamation 20-28, the City of Auburn is prohibited from holding an in-person meeting at this time.

City of Auburn Resolution No. 5533, designates City of Auburn meeting locations for all Council, Board and Commission meetings as virtual. All meetings will be held virtually and telephonically until King County enters into Phase 3 of Governor Inslee's Safe Start — Washington's Phased Reopening plan.

The link to the Virtual Meeting or phone number to listen to the Council Meeting is: Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. <https://zoom.us/j/96910923695>

Or join by phone:

253 215 8782

877 853 5257 (Toll Free)

Webinar ID: 969 1092 3695

B. Roll Call

III. ANNOUNCEMENTS REPORTS AND PRESENTATIONS

IV. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Solid Waste Contract Procurement (Thomas) (30 Minutes)

B. Ordinance No. 6775 (Gaub) (5 Minutes)

An Ordinance granting a Utility Franchise Agreement to Puget Sound Energy to use the public Right-of-Way

C. Ordinance No. 6779 (Tate) (5 Minutes)

An Ordinance amending Chapter 18.68 of the Auburn City Code (ACC) containing regulations related to amending the text of Title 18 ACC 'Zoning' and the zoning map

V. COMMUNITY WELLNESS DISCUSSION ITEMS

A. Community Development Block Grant 2019 CAPER (Tate) (15 Minutes)

An overview of the 2019 City of Auburn CDBG Consolidated Annual Performance and Evaluation Report, including funds spent and progress made toward Annual Action Plan goals.

B. Ordinance No. 6780 (Tate) (20 Minutes)

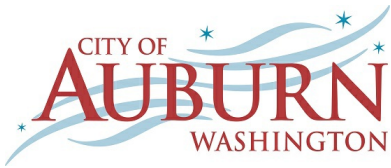
An Ordinance amending Auburn City Code to incorporate a Just Cause Eviction Ordinance into Title 5.

VI. OTHER DISCUSSION ITEMS

VII. NEW BUSINESS

VIII. 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:

Solid Waste Contract Procurement (Thomas) (30 Minutes)

Date:

July 7, 2020

Department:

Finance

Attachments:

[Memo](#)

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background Summary:

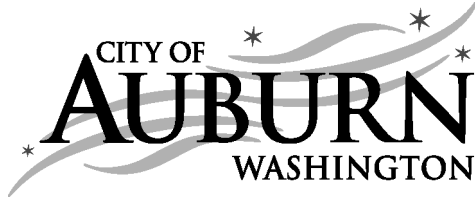
The City of Auburn's solid waste contract with Waste Management and franchise agreement with Republic Services both expire September 30, 2021. The City conducted a request for proposal (RFP) process to competitively procure the next solid waste contract. The City received two responsive proposals and staff have completed the evaluation process. Staff recommends moving into the contract negotiation phase with the highest scoring proponent, Waste Management. Staff will bring the finalized contract to City Council for review and approval in September 2020. The new contract will be effective October 1, 2021, and encompass the entire City.

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

Thomas

Meeting Date: July 13, 2020

Item Number:



Interoffice Memorandum

To: Auburn City Council

From: Jamie Thomas, Finance Director
Joan Nelson, Interim Utility Billing Account Manager

CC: Nancy Backus, Mayor

Date: July 13, 2020

Re: Solid Waste Collection Services Contract Procurement

BACKGROUND

The City of Auburn's solid waste contract with Waste Management and franchise agreement with Republic Services both expire September 30, 2021. The City began the request for proposal (RFP) process in September 2019, to competitively procure the next solid waste contract. The City wanted to conduct a competitive process to ensure the best rate and service package for City of Auburn residents and businesses.

Waste Management has been the City of Auburn's contracted hauler since 2001, when the last RFP process was conducted. The City re-negotiated the solid waste collection contract with Waste Management in 2011. The contract was for seven years plus two – two-year extension options. In 2015, the City conducted a request for bid (RFB) process, but chose to exercise the last extension since only one bid was received.

Republic Services became a hauler within the City limits of Auburn when the City annexed portions of West Hill and Lea Hill. State law allows for a hauler to continue operating after an annexation for a minimum of seven years. The City negotiated a franchise agreement for ten years, which was extended so that the expiration date would coincide with the expiration date of the City's solid waste collection contract.

The current RFP process is to establish a new, consolidated solid waste contract that will cover the service area Waste Management currently covers, as well as the service area Republic Services currently covers through the franchise agreement.

REQUEST FOR PROPOSAL PROCESS

The City retained Jeff Brown with Epicenter Services, LLC to assist with the solid waste contract procurement process. In September 2019, City staff met with prospective haulers in the region to discuss options, answer questions, and address concerns regarding the upcoming RFP process.

The City applied information learned from those meetings and questions from the industry review process to draft the RFP.

The City released the Solid Waste Collection Contract RFP on December 19, 2019. Proponents had two opportunities to submit questions before the final proposals were due on May 1, 2020. The original due date was April 15, 2020, but was extended due to the COVID-19 pandemic. The City received two responsive proposals - one from Republic Services and one from Waste Management.

PROPOSAL EVALUATION

The proposals were evaluated based on quantitative (60 points) and qualitative (40 points) elements. The 60:40 split recognizes the importance of cost while acknowledging qualitative elements that are important to ratepayers.

Quantitative Evaluation (60 points): The City's consultant completed the evaluation of proposed service rates, with scoring based on the proponent's proposed fees for providing the services as specified in the base contract. Scoring appears as "Rate Proposal" in Table 1.

Qualitative Evaluation (40 points): City staff completed the qualitative evaluations. A team composed of the Director of Administration, the Assistant Director of Engineering Services, the Finance Planning Manager, the Development Services Manager, and the Interim Utility Billing Services Manager reviewed the written proposals, attended site visits of proponent facilities, and conducted interviews with proponent representatives. Qualitative scoring appears as "Written Proposal" and "Site Visit and Interview" in Table 1.

SCORING SUMMARY

The following table shows the combined score for each evaluation element. Waste Management received the highest combined score for each element, resulting in the highest overall score as well.

Table 1 – Proponent Scores

Element	Weight	Republic Services	Waste Management
Rate Proposal	60%	58	60
Written Proposal	35%	25.9	29.05
Site Visit and Interview	5%	4.13	4.38
WEIGHTED TOTAL	100%	88.03	93.43

RECOMMENDATION

City staff conducted a competitive process to obtain a quality service package at the best price for Auburn residents and businesses. The procurement process was conducted in compliance with purchasing procedures, supported policies established in the King County Comprehensive Solid Waste Management Plan, and encouraged participation of potential proponents by conducting the process with integrity and transparency. Waste Management achieved the highest overall score, resulting in the staff recommendation to proceed to the contract negotiation phase with Waste Management.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6775 (Gaub) (5 Minutes)

Department:

Public Works

Attachments:

[Draft Ordinance No. 6775](#)

Date:

July 6, 2020

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background Summary:

Section 20.06.010 of the Auburn City Code requires a franchise for any commercial utility to use public ways of the City and to provide commercial utility services to any person or area in the City.

PSE has applied for a new franchise agreement to continue to operate their electrical facilities within the City's rights of way as their previous franchise agreement recently expired. PSE currently provides electrical services to all parts of the city, including commercial and residential service. The proposed agreement is consistent with the City's standard franchise agreement language.

A public hearing to consider this application and take public comment is scheduled before the City Council on July 20, 2020 in accordance with Auburn City Code 20.06.030.

Reviewed by Council Committees:

Councilmember: Brown

Staff:

Gaub

Meeting Date: July 13, 2020

Item Number:

ORDINANCE NO. 6775

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of electric energy for power, heat and light, and any other purposes for which electric energy may be used.

WHEREAS, the City Council of the City of Auburn finds that the general public health, safety, welfare, necessity and convenience require Facilities to provide for transmission, distribution and sale of energy for power, heat, and light, and other purposes for which energy may be used, be constructed, maintained and repaired in an orderly manner when those Facilities are located in, under, on or along City rights-of-way.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of Auburn, a code city of the State of Washington, and its successors and assigns.

1.1.3 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and public rights-of-way of the City as now laid out, platted, dedicated or improved; and any; every and all roads, streets, avenues, alleys, highways and public rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.4 "Facilities" means, collectively, any and all electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, fixtures, and communication systems; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way pertaining to any and all of the foregoing for the purpose of transmission, distribution and sale of energy, whether the same be located overhead or underground.

1.1.5 "Ordinance" means Ordinance No. 6775, which sets forth the terms and conditions of this Franchise.

1.1.6 "Public Improvement" means any capital improvement, maintenance or repair within the Franchise Area that is undertaken by or on behalf of the City and is funded by the City (either directly or indirectly with its own funds or with other public monies obtained by the City), including any capital improvement within the City's adopted Transportation Improvement Plan or Capital Facilities Plan.

Section 2. Facilities Within Franchise Area.

2.1 The City does hereby grant to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of energy for power, heat, light and such other purposes for which energy may be used.

2.2 This Franchise shall not convey any right to PSE to install its Facilities on or to otherwise use City-owned or City-leased properties outside the Franchise Area; provided, however, that PSE shall retain the right to maintain, repair and operate Facilities installed pursuant to prior franchise agreements with the City regardless of whether said Facilities are outside the Franchise Area, but such right shall be subject to the provisions of Section 2.3.

2.3 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures.

Section 3. Noninterference and Maintenance of Facilities.

3.1 PSE's Facilities shall be constructed, installed, maintained, replaced, upgraded, relocated, and repaired within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington, the City of Auburn Design and Construction Standards, and the ordinances, rules and regulations of the City; provided, however, that in the event of any conflict or inconsistency of such codes, ordinances, rules, and regulations with the terms of this Franchise, the terms of this Franchise shall govern and control; provided further that nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes, ordinances, rules, and regulations. If, during the term of this Franchise, the City is specifically required by state law to pass any code or ordinance which conflicts or is inconsistent with any provision of this Franchise, the provisions of Section 22 will thereafter apply.

3.2 Any repair of PSE's Facilities within the Franchise Area shall be made within the time and in a manner which conforms with generally accepted customs, practices and standards in the industry. In the event of any emergency in which PSE's Facilities located in or under the Franchise Area break or are damaged, or if PSE's Facilities within the Franchise Area are otherwise

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in a condition as to immediately endanger the property, life, health or safety of any individual, PSE shall, upon receipt of notification from the City of the existence of such condition, take all reasonable actions to correct the dangerous condition.

3.3 Whenever PSE permanently discontinues use of any above ground or at grade Facilities within the Franchise Area, such as poles (with or without crossarms), braces, guys, anchors and vaults, due to modifications or upgrades to PSE's Facilities within the Franchise Area, the discontinued Facilities shall be removed after all PSE and third party attachments have been disconnected and removed from such Facilities and in a manner consistent with any contractual obligations to third party users of such Facilities. Once all PSE and third-party attachments have been disconnected and removed from such Facilities, the removal shall occur within ninety (90) calendar days unless otherwise agreed to. If such discontinuation is caused by a Public Improvement, the removal shall occur as described in the schedule established pursuant to Section 7. In the event that any PSE Facility creates an unreasonable interference with normal right-of-way operations, the City may request that PSE remove or relocate such Facilities on an expedited basis.

Section 4. Permits; Restoration.

4.1 Whenever it shall be necessary for PSE to engage in any work within the Franchise Area, PSE shall apply for all necessary City permits to do such work, and shall, except to the extent inconsistent with the terms and conditions of this Franchise or where expressly provided otherwise herein, comply with all requirements and conditions of such permits including but not limited to location restrictions, traffic control, and restoration, repair or other work to restore the surface of the Franchise Area, as nearly as practicable, to its condition immediately prior to the work, or as otherwise specified in the permit issued by the City in connection with the work in conformance with the City's current design and construction standards and the applicable provisions of the Auburn City Code that are not inconsistent with the requirements set forth in this Section 4.1 or elsewhere in this Franchise. Such restoration responsibility shall continue for a period of time to correspond to the remaining life of the existing structure, pavement and/or surface in which the work was accomplished, but shall not apply to any subsequent repair or restoration made necessary by the acts or omissions of the City or any third party. It is further provided that in the event that PSE has any work in the Franchise Area completed by any of its authorized agents or subcontractors, PSE shall remain fully responsible for the permit, permitted work and any other permit requirements, notwithstanding any provisions of this Franchise to the contrary.

4.2 In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to immediately endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, provided that PSE shall notify the City telephonically or in person within twenty-four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. For the purposes hereof, "as soon as reasonably practicable" means that the permit application shall be submitted to the City not later than ten (10) business days after the date of the commencement of the action that requires such permit.

4.3 Nothing in this Franchise is intended, nor shall it be construed, as a hindrance to PSE's ability to take such actions as it deems necessary to discharge its public service obligations in accordance with the laws of the State of Washington.

Section 5. Maps, Drawings and Records.

5.1 PSE shall provide the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area and is made in connection with the City's planning of capital improvement projects. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area.

5.2 As to any such drawings and drawing file layers so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

5.3 Upon the City's reasonable request in connection with the City's design of new streets and intersections and major renovations of existing streets and intersections, and any other Public Improvement, undertaken by the City, PSE shall further provide to the City (a) the location of PSE's underground Facilities at those specific locations within the Franchise Area affected by the project by either field markings or by locating the Facilities in the City's design drawings, and (b) other reasonable cooperation and assistance; provided, however, that nothing in this Section 5.3 or any other provision of this Franchise is intended to (or shall) relieve any person or entity of its obligations under applicable law with respect to determining the location of underground facilities.

5.4 The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. PSE shall clearly mark any information that it provides to the City as "Proprietary" information if PSE believes that disclosure of that information would be exempt under an applicable exemption in RCW 42.56.270. The City agrees that if it receives a request for information marked by PSE as proprietary, it will promptly, notify PSE of the request. If PSE does not obtain an order enjoining release of the documents in 10 working days, the City will release the documents.

Section 6. Right to Complete Work.

6.1 In the event that PSE fails to perform any work to restore the surface of the Franchise Area to enable the free passage of traffic and pedestrians by the traveling public as required by this Franchise or any permit issued by the City relating to such work, and such failure continues for a period of ten (10) calendar days after PSE receives written notice from the City regarding such failure (or, in the event of an emergency situation, such shorter period of time after Ordinance No. 6775

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receipt of notice from the City as is reasonably required in the circumstances), the City may, but in no event is obligated to, perform or contract for such work and, thereafter, PSE shall, upon the City's written request, reimburse the City for the reasonable costs incurred by the City in having such work performed.

Section 7. Relocation of Facilities.

7.1 Whenever the City causes a Public Improvement to be constructed within the Franchise Area, and such Public Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 7.2 below):

7.1.1 The City shall provide PSE written notice requesting such relocation, along with review plans for the Public Improvement that are sufficiently complete to allow for PSE's evaluation and coordination of the relocation, not less than four (4) weeks prior to the date of a coordination meeting to be held between the City and PSE to discuss said Facilities to be relocated; and

7.1.2 The City and PSE shall, at the coordination meeting described in Section 7.1.1 above, jointly identify and define the project requirements, schedule and timeframe of relocation, construction standards, and tasks that both parties agree shall govern the relocation.

PSE shall relocate such Facilities within the Franchise Area, at no charge to the City and in accordance with the relocation schedule mutually agreed upon by the parties, subject to any applicable tariffs on file with the Washington Utilities and Transportation Commission and any different arrangement expressly set forth in a separate agreement signed by PSE and the City. The City shall use its best efforts to avoid the subsequent relocation of any Facilities for a period of three (3) years from the date of such relocation, provided that if the City requires such subsequent relocation, the City shall bear the cost thereof, excepting in circumstances which the City could not reasonably have foreseen as of the date of such relocation.

7.2 Whenever (i) any public or private development within the Franchises Area, other than a Public Improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City (including, without limitation, any condition or requirement imposed by the City pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development), then in such event, PSE shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

7.3 Subject to compliance by the City with the terms of this Section 7 and consistent with Section 9, and to the maximum extent provided by law, PSE shall reimburse the City for any costs, expenses, and/or damages required to be paid to the City's third party contractor(s) as a direct result of PSE's delay in meeting the mutually-established schedule for the relocation work required to accommodate a Public Improvement to the extent the delay is directly caused by PSE's

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breach of its obligations under this Section 7 with respect to the relocation of PSE's Facilities within the Franchise Area in accordance with the mutually established schedule for the relocation work. PSE is not responsible for any cost, expense or damage that results from any delay in meeting the schedule for a Public Improvement if, and to the extent the delay is caused by the City, any third party, or any force majeure event.

7.3.1 PSE will not be required to reimburse the City unless the City first tenders the third party contractor delay claim within a reasonable time following the City's receipt of the claim. If a dispute arises between the City and PSE under this Section 7.3, the Parties shall, within fifteen (15) days of the date of the City's tendering a claim for delay damages, meet and commence good faith negotiations to resolve the Parties' differences. The Parties shall undertake commercially reasonable efforts to resolve their differences, giving due regard to all pertinent facts and relevant circumstances so as to fully effect the intent of Section 7.3 of the Franchise. The Parties shall make officers or officials with authority to settle the dispute available for the negotiations. The Parties may elect, by mutual agreement, to submit the dispute to mediation, to be conducted by a mutually agreeable mediator. In such event, the mediator's fee shall be divided equally and borne in equal portions by the Parties. If, at any time during the good-faith efforts to resolve the Parties' differences over the delay claim, either Party determines that such negotiations will not result in a resolution of the dispute, such Party may terminate the negotiations by written notice to the other Party and may thereafter pursue any remedy as may be available to such Party under the Franchise or applicable law.

7.4 Nothing in this Section 7 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

Section 8. Undergrounding of Facilities.

8.1 PSE acknowledges the City desires to encourage the undergrounding of overhead electrical Facilities within the Franchise Area. The City acknowledges that PSE utilizes such overhead Facilities to provide electrical service on a non-preferential basis subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of PSE's overhead electrical Facilities within the Franchise Area. If, during the term of this Franchise, the City shall direct PSE to underground overhead electrical Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. This Section 8 shall govern all matters related to the undergrounding of PSE's overhead electrical Facilities within the Franchise Area.

Section 9. Indemnification.

9.1 PSE shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all

claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of, or tortious misconduct by, PSE, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in the Franchise Area or in any other public place in performance of work or services permitted under this Franchise.

9.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

9.3 In the event any claim or demand for which indemnification is provided under Section 9.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that PSE refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 9.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of PSE, then PSE shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

9.4 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 PSE and the City, its officers, employees and agents, PSE's liability hereunder shall be only to the extent of PSE's negligence. In the event it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this Franchise, PSE's indemnification obligations under Section 9.1 shall apply to the maximum extent permitted thereunder, to the full extent of PSE's negligence. Further, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

9.5 It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, PSE waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. This waiver has been mutually negotiated by the parties.

9.6 Notwithstanding any other provisions of this Franchise, PSE assumes the risk of damage to its Facilities located in the Franchise Area from activities conducted by the City, its

officers, agents, employees, and contractors, except as set forth below. PSE releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of PSE's Facilities within the Franchise Area caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the Franchise Area, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors.

9.7 The provisions in this Section 9 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification is provided under Section 9.1 and which is based on an act or omission that occurred during the term of this Franchise.

Section 10. Reservation of Rights.

10.1 In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's existing Facilities unless the City reasonably determines that to do so would be impracticable in light of the nature of the vacation.

10.2 The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or any portions of PSE's Facilities within the Franchise Area.

10.3 Power services for City facilities within the right-of-way will be placed within the public right-of-way whenever feasible.

Section 11. Moving Buildings within the Franchise Area.

11.1 If any person or entity obtains permission from the City to use the Franchise Area for the movement or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with PSE for the temporary adjustment of PSE's overhead wires necessary to accommodate the movement or removal of such building or other object, where the movement or removal of such building or other object will pass under PSE's overhead wires or where the movement or removal of such building or other object will otherwise require the temporary adjustment of PSE's overhead wires. The City shall require such person or entity to complete such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) calendar days prior to the movement or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the movement or removal of such building or object.

Section 12. Use of Facilities by City.

12.1 During the term of this Franchise, the City may, subject to PSE's prior written consent which shall not be unreasonably withheld, install and maintain City-owned overhead wires

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for non-commercial, municipal purposes, such as traffic signalization and police and fire communications upon PSE's poles which are Facilities located within the Franchise Area. The foregoing rights of the City to install and maintain such wires are further subject to the following:

12.1.1 The City shall perform such installation and maintenance at its sole risk and expense in accordance with all applicable laws and in accordance with such reasonable terms and conditions as PSE may specify from time to time (including, without limitation, requirements accommodating Facilities or the facilities of other parties having the right to use the Facilities); and

12.1.2 PSE shall have no obligation under Section 9 in connection with any City-owned wires installed or maintained on PSE's poles.

Section 13. Vegetation Management.

13.1 PSE shall not apply any pesticide or herbicide within the Franchise Area without prior approval of the City, which approval shall not be unreasonably withheld. If PSE first obtains such approval from the City to apply a specific product in accordance with the defined procedure on an ongoing basis throughout the Franchise Area, PSE shall not thereafter be required to obtain the City's approval on each occasion such product is so applied. Trees which may interfere with ungrounded supply conductors should be trimmed or removed. PSE shall coordinate its routine vegetation management activities with the City and shall trim vegetation in close proximity to its Facilities within the Franchise Area in compliance with all City ordinances, regulations, resolutions, and rules (including those relating to the protection of environmentally sensitive areas). However, such obligation to coordinate and comply shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to PSE's Facilities, poses an imminent threat to property, public safety or continuity of electrical service.

Section 14. Lighting.

14.1 PSE shall install, operate and maintain street lighting as requested and paid for by the City in accordance with applicable schedules and tariffs on file with the Washington Utilities and Transportation Commission (or such other regulatory agency having jurisdiction), and a consistent with a separate Street Lighting Services Agreement. Private lighting requested and paid for by a third-party user to be within the Franchise Area must be in accordance with all applicable schedules and tariffs on file with the Washington Utilities and Transportation Commission (or such other regulatory agency having jurisdiction), and to the extent consistent with such schedules and tariffs, must comply with City ordinances, rules, regulations, and design and construction standards and will be subject to all applicable City permits.

Section 15. Recovery of Costs; Permit Fees.

15.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE as a result of this Franchise. However, as provided in RCW 35.21.860, the City may recover from PSE the actual

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administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. With respect to its payment of such administrative expenses, the City shall submit to PSE statements/billings which specify the amounts due. PSE shall make payment to the City in reimbursement of such expenses within thirty (30) calendar days of the receipt of such statements/billings. Failure by PSE to pay such amount within such thirty (30) calendar day time period shall constitute a failure to comply with the Franchise for the purposes of Section 16, Default, hereof. Additionally, the failure by PSE to timely pay said amounts shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made. Furthermore, any late payment shall also accrue interest computed at the rate of twelve percent (12%) per annum from the thirtieth day.

15.2 With respect to the payment of permit fees, PSE shall comply with all applicable payment terms set forth in applicable codes, ordinances or permits of the City, including, without limitation, any such terms relating to the schedule for payment and the City's right to withhold permits or charge interest in connection with any payment default by PSE; provided, however, the City shall accept payment of such permit fees directly from contractors of PSE that perform work in the Franchise Area on behalf of PSE so long as PSE has notified the City in writing that the contractor is authorized to do so on PSE's behalf and PSE remains responsible for compliance with the terms of the permit.

Section 16. Default.

16.1 If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within thirty (30) calendar days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after the expiration of said thirty (30) calendar day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise. The parties expressly acknowledge and agree, however, that the forgoing rights and obligations of the parties are subject in all respects to excused performance based on a Force Majeure Event (as defined in Section 21.14).

16.2 No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation by the other party of any provision of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages for such violations by the other party, or to seek and obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 17. Nonexclusive Franchise.

17.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise.

This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 18. Franchise Term.

18.1 This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) calendar days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance. It is further provided that upon PSE's request for an extension, this Franchise may be extended by the City, for one five (5) year extension, provided that PSE is in full compliance with the terms and conditions of the Franchise. In any such extension, the terms and conditions of this Franchise shall remain in full force and effect, except as may be otherwise mutually agreed by the parties hereto.

18.2 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 eighty (180) calendar days in advance of intent not to renew the Franchise.

Section 19. Insurance; Bond.

19.1 PSE shall maintain the following liability insurance coverages, insuring both PSE and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured's against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE:

19.1.1 Commercial General Liability (CGL) insurance with limits not less than five million dollars (\$5,000,000) per occurrence for bodily injury or death, property damage, and public liability.

19.1.2 Automobile liability for owned, non-owned and hired vehicles with a Combined Single Limit of three million dollars (\$3,000,000) for each accident.

19.1.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

19.2 The liability insurance described herein shall be maintained by PSE throughout the term of this Franchise, and such other period of time during which PSE is operating its Facilities within the Franchise Area without a franchise, or is engaged in the removal of its Facilities from the Franchise Area. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. Coverage under this policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The City shall be included as an additional insured under PSE's Commercial General Liability insurance policy. There shall be no exclusion arising out of liability from explosion, or collapse.

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PSE shall be the primary insured as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

19.3 PSE shall provide the City with written notice of any policy cancellation within ten (10) business days of their receipt of such notice. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, PSE shall provide evidence of a replacement policy. PSE agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required for the duration of this Franchise and, in the case of the Commercial General Liability, for at least three (3) years after expiration of the term of this Franchise. Any lapse in the required insurance coverage shall be cause for termination of this Franchise.

19.4 In lieu of the insurance requirements set forth in this Section 19, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

19.5 Before undertaking any of the work authorized by this Franchise, PSE shall furnish a bond executed by PSE and a corporate surety authorized to do surety business in the State of Washington in an amount reasonably established by the City based on the nature and scope of the work being performed (but not to exceed one-hundred thousand dollars (\$100,000.00)) to ensure the full and faithful performance by PSE of its obligations under this Franchise relating to its construction, installation, maintenance, and/or removal of Facilities in the Franchise Area and for restoration of the Franchise Area associated with such activities performed under this Franchise, or to reimburse the City for its direct costs associated with such restoration or removal activities. Such financial guarantee shall not be construed to limit PSE'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. The bond shall be conditioned so that PSE shall restore or replace any defective work or materials discovered in the restoration of the Franchise Area discovered within a period of two (2) years from the inspection date of any such restoration. PSE may meet the obligations of this Section 19.5 with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

19.5.1 The City reserves the right to require additional bonding from PSE for PSE projects that have a restoration value for public infrastructure as determined by the City that exceeds the amount of the bond specified in 19.5 above.

Section 20. Assignment.

20.1 PSE shall not assign or transfer its rights, benefits and privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably

withheld or delayed. Prior to any assignment, the intended assignee shall, within thirty (30) calendar days of the proposed date of any assignment, file written notice of the intended assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written consent, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 21. Miscellaneous.

21.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, or is held to be inapplicable to any person or circumstance, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, and its application to other persons and circumstances shall not be affected. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

21.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 9 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

21.2.1 references this Franchise; and

21.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

21.3 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control, subject only to Section 22 with respect to any such tariff which is adopted after the date of this Franchise.

21.4 In connection with its performance of work under this Franchise, PSE shall, during the term of this Franchise, fully comply with all applicable equal employment or non-discrimination provisions and requirements of federal, state and local laws.

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21.5 During the term of this Franchise, each party shall notify and keep the other party apprised of its local address for the service of notices by mail. All notices and other communications given or required to be given under this Franchise shall be sent postage prepaid to such respective address and such notices shall be effective upon receipt. Any notice, order or other communication regarding any default or breach of this Franchise, or any resulting termination or revocation of this Franchise, must be sent under this Section 21.5 to the intended recipient by certified mail. The City and PSE may change their respective addresses by written notice to the other party at any time. As of the effective date of this Franchise:

PSE's notice address shall be:

Puget Sound Energy Inc.
6905 S 228th Street
Kent WA 98032
Attention: Municipal Liaison Manager

With a copy to:

Puget Sound Energy, Inc.
P.O. Box 90868
Bellevue, WA 98009-0868
Attention: General Counsel

The City's notice address shall be:

City of Auburn
Public Works
25 West Main Street
Auburn, WA 98001-4998
Attention: Public Works Director

21.6 During the term of this Franchise, PSE shall also provide the City (and maintain current) a written list showing the names and telephone numbers of the specific departments and (if applicable) individuals, including backup contacts if the first contact individual is not available or otherwise not there, within PSE that may be contacted by the City to identify and address problems and issues that arise under this Franchise. PSE shall ensure that the list includes contact information for addressing emergency support and technical support issues (with emergency support being available 24 hours per day), and shall ensure that the names and telephone numbers appearing on the list in those areas have the expertise and authority (or access to the same) needed to address the problem or issue promptly and effectively. PSE shall use all reasonable efforts to respond to requests from the City promptly, to work diligently with the City in resolving any problems or issues identified by the City, and to actively communicate with the City regarding each problem or issue from the time it is first identified by the City until the time it is resolved. PSE shall update the list as necessary (i.e., if changes in applicable contact individuals or contact information is changed) to ensure that it remains current and shall give written notice of the change to the City.

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21.7 PSE and the City shall, as reasonably requested by the other party from time to time, discuss and coordinate their activities with respect to construction which may affect the public rights of way in any manner in an effort to minimize public inconvenience, disruption or damages.

21.8 This Franchise shall be binding upon the parties hereto and their permitted successors and assigns.

21.9 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

21.10 The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the right of such party thereafter to enforce the same. Nor shall the waiver by a party of any breach of any provision hereof by the other party be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

21.11 This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. The venue and jurisdiction over any dispute related to this Franchise shall be with the King County Superior Court, Regional Justice Center, Kent, Washington (or, if the Regional Justice Center is no longer in operation, such other local facility as is then operated by the King County Superior Court).

21.12 If either party shall be required to bring any action to enforce any provision of this Franchise, or shall be required to defend any action brought by the other party with respect to this Franchise, and in the further event that one party shall prevail in such action, the other party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

21.13 This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations between the parties; provided, however, that nothing herein is intended to, or shall, alter, amend or supersede in any way City of Auburn Ordinance Number 3581, adopted January 2, 1991, under which the City Council granted a franchise to PSE's predecessor-in-interest, Washington Natural Gas Company, to construct, maintain, repair, renew and operate a gas distribution system (the "WNG Franchise"), and the WNG Franchise shall remain in full force and effect in accordance with its terms.

21.14 In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by any event or circumstance beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service; laws, regulations, rules or orders

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of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

Section 22. Changes in Laws.

22.1 If, during the term of this Franchise, there becomes effective any change in federal or state law (including, but not limited to, a change in any tariff filed by PSE with the Washington Utilities & Transportation Commission) and such change:

22.1.1 specifically requires the City to enact a code or ordinance which conflicts or is inconsistent with any provision of this Franchise; or

22.1.2 results in a PSE tariff which conflicts or is inconsistent with any provision of this Franchise;

then, in such event, either party may, within ninety (90) calendar days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by such change in federal or state law and neither party shall be obligated to reopen negotiations on any other term or condition of this Franchise. Within thirty (30) calendar days from and after the other party's receipt of written notice to so commence such negotiations, the parties shall, at a mutually agreeable time and place, commence such negotiations. The parties shall thereafter conduct such negotiations at reasonable times, in a reasonable manner, in good faith and with due regard to all pertinent facts and circumstances; provided, however, that (a) in the event the parties are unable, through negotiation, to reach mutual agreement upon terms and conditions of such amendment, then either party may, by written notice to the other, demand that the parties seek to arrive at such agreement through mediation or, if no such demand has previously been submitted, terminate this Franchise upon not less than ninety (90) calendar days prior written notice to the other party; and (b) pending such negotiations, mediation and/or termination, and except as to any portion thereof which is in conflict or inconsistent with such change in federal or state law, the Franchise shall remain in full force and effect. For purposes of this Section 22.1, the term "mediation" shall mean mediation at the local offices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or, if JAMS shall cease to exist or cease to have a local office, mediation at the local offices of a similar organization. The parties may agree on a jurist from the JAMS panel. If they are unable to agree, JAMS will provide a list of the three available panel members and each party may strike one. The remaining panel member will serve as the mediator.

Section 23. Severability.

23.1 If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 24. Ratification.

24.1 Any act of the City consistent with the authority granted by the City prior to the effective date of this Ordinance is hereby ratified and affirmed by the City.

Section 25. Effective Date.

25.1 This Ordinance shall be effective on _____, 20__, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on _____, 20__; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of Auburn by a vote of at least five members of the City Council on _____, 20__.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, Mayor

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

STATE OF WASHINGTON)
COUNTY OF KING) ss.

I, Shawn Campbell the duly qualified City Clerk of the City of Auburn, a Non-charter Code City, situated in the Counties of King and Pierce, State of Washington, certify that the foregoing is a full, true and correct copy of Ordinance No. 6775 an ordinance of the City of Auburn, entitled:

ORDINANCE NO. 6775

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of electric energy for power, heat, light and any other purpose for which electric energy can be used.

I further certify that said Ordinance No. 6775 was: (i) introduced on the ____ day of _____, 20__; (ii) submitted to the City Attorney on ____ day of _____, 20__; (iii) published on the ____ day of _____, 20__, according to law; (iv) approved by a majority of the entire legislative body of the City of Auburn, at a regular meeting on ____ day of _____, 20__; and (v) approved and signed by the Mayor of the City of Auburn on the ____ day of _____, 20__.

WITNESS my hand and official seal of the City of Auburn, this ____ day of _____, 20__.

Shawn Campbell, MMC, City Clerk
City of Auburn, State of Washington

HONORABLE MAYOR AND CITY COUNCIL
CITY OF AUBURN, WASHINGTON

In the matter of the application :
of Puget Sound Energy, Inc., a : Franchise Ordinance No. 6775
Washington corporation, for a :
franchise to construct, operate :
and maintain facilities in, upon, :
over under, along, across and :
through the franchise area of the : ACCEPTANCE
City of Auburn, Washington :

WHEREAS, the City Council of the City of Auburn, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 6775, bearing the date of _____, 20__; and

WHEREAS, a copy of the Ordinance granting the franchise was received by the Puget Sound Energy, Inc. on _____, 20__, from said City of Auburn, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, accepts said Ordinance and all the terms and conditions of the Franchise, and files this, its written acceptance, with the City of Auburn, King County, Washington.

Dated this _____ day of _____, 20__.

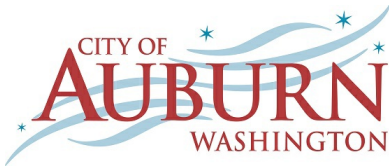
ATTEST:

PUGET SOUND ENERGY, INC.

By: _____

Copy received for City of Auburn on
_____, 20__

By: _____
City Clerk



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6779 (Tate) (5 Minutes)

Date:

July 7, 2020

Department:

Community Development

Attachments:

- [1. Ordinance No. 6779](#)
- [2. Exhibit A](#)
- [3. Zoning and Map Text Amendments](#)
- [4. Further Background on the Types of Rezones.](#)

Budget Impact:

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

Administrative Recommendation:

Schedule Ordinance No. 6779 for action by City Council at the regular meeting on July 20, 2020.

Background Summary:

Chapter 18.68 ACC pertains to the regulations for amending the City's Zoning Code (Title 18) and the City's Zoning Map (also known as a "rezone"). The proposed changes seek to clarify the procedural steps and the different types of applications, as well as, the substantive issues such as the criteria for decision making. The proposed changes will help to provide guidance to the public, the Planning Commission/Hearing Examiner, as well as City Staff. The Planning Commission has reviewed these proposed changes and recommends that the City Council approve the changes shown in Ordinance No. 6779.

Reviewed by Council Committees:

Councilmember: Brown

Staff: Tate

Meeting Date: July 13, 2020

Item Number:

ORDINANCE NO. 6779

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING CHAPTER 18.68 OF THE AUBURN CITY CODE (ACC) RELATING TO AMENDING THE TEXT OF TITLE 18 'ZONING' AND ZONING MAP CHANGES AS SHOWN IN THE ATTACHED EXHIBIT.

WHEREAS, Auburn City Code (ACC), specifically Chapter 18.68 ACC, contains language for amending the text of the Title 18 'Zoning' as well as for amending the City's Zoning Map; and

WHEREAS, with respect to the existing Code language, additions to, and modifications to the existing provisions would be valuable to both City Staff (when providing customer service), as well as to the public (criteria to respond to when submitting applications), and the City's Planning Commission and Hearing Examiner (when reviewing the applications for consistency and suitability); and

WHEREAS, a SEPA Determination of Nonsignificance (DNS) and Notice of Application (NOA) was issued on March 19, 2020 for the proposed amendments, with no comments received; and

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

Section 1. Amendment to City Code. Chapter 18.68 ACC is amended to read as shown in Exhibit A of this Ordinance.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 6. Severability. The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

Section 7. 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

Kendra Comeau, City Attorney

Published: _____

Chapter 18.68
ZONING MAP AND TEXT AMENDMENTS

Sections:

- 18.68.010 Purpose.
- 18.68.020 Zoning map amendments.
- 18.68.025 Zoning text amendments.
- 18.68.030 Types of amendments and processing.
- 18.68.040 Rezone approval criteria.
- 18.68.050 Amendments to rezone requests.
- 18.68.060 Contract rezones.

18.68.010 Purpose.

The purpose of this chapter is to establish a process to amend either the text or map of this title. An amendment of the zoning map is also referred to as a "rezone" as used elsewhere in this title.

18.68.020 Zoning map amendments.

Zoning map amendments may be initiated by the City or one or more property owners. Applications from property owners must include valid authorization from all of the subject property owners involved in the application.

18.68.025 Zoning text amendments.

Text amendments may be initiated by the City or the public.

A. City-initiated text amendments.

1. The Director may initiate an amendment to the text of this title for the following purposes:

- a. Change the text to increase consistency with the Comprehensive Plan in compliance with ACC 14.22.050, 'Conformance and consistency'.
- b. Change the text in response to changes in state and/or federal laws.
- c. Change the text to correct errors, which are determined by the Director to be substantive and beyond a scrivener's error.
- d. Change the text to increase internal consistency of this title (Zoning Code).

2. The Mayor may request the Director to initiate an amendment to the text of this title, or by the request of the Mayor on behalf of the City Council or the Planning Commission.

B. Public-initiated text amendments.

1. Any member of the public may submit an application requesting to amend the text of this Title using the City's established application process.

18.68.030 Types of amendments and processing.

There are three types of map amendments and two types of text amendments; the descriptions and processing procedures for these shall be as follows:

A. Map amendment types:

1. A "Site-Specific Rezone, Category 1", is an application requesting to rezone a property to a zoning district that implements the Comprehensive Plan land use map designation applied to the property. This type of rezone shall be processed as a Type IV decision, consistent with ACC 14.03.040.

2. A "Site-Specific Rezone, Category 2", is an application requesting to rezone a property to a zoning district that does not implement (i.e. is in conflict with) the existing Comprehensive Plan land use map designation applied to the property, and a concurrent Comprehensive Plan amendment application must be submitted. This type of rezone shall be processed as a legislative non-project decision, consistent with ACC 14.03.060.

3. An "Area-Wide Rezone" is a rezone initiated either by the City or by multiple property owners that applies to a significant number of properties, as determined by the Director. This type of rezone shall be processed as a legislative non-project decision, consistent with ACC 14.03.060.

B. A "Zoning Text Amendment" is an application to change the text of Title 18 ACC. This type of application or initiation shall be processed as a legislative non-project decision, consistent with ACC 14.03.060. Public notice shall be provided consistent with Title 14 ACC.

1. Substantive zoning text amendments. For the purposes of this chapter, substantive zoning text amendments shall be distinguished from procedural or administrative amendments in accordance with the following: "Substantive" matters relate to regulations that define or limit what can be done in terms of conduct, use or action (e.g., what land use may be made of property, what requirements apply to development, and what public infrastructure may be required of certain developments). "Procedural" or "administrative" matters are those that relate to the process of how an application to take such action must be pursued (e.g., time limits for decisions and appeals, what forms must be used, and where or how applications must be submitted. Essentially, "procedural" or "administrative" matters are the mechanical rules by which substantive issues may be pursued). Substantive text amendments shall be reviewed by the Planning Commission and the Planning Commission shall conduct a public hearing and make a recommendation before being presented to the City Council for consideration and action.

2. Procedural zoning text amendments. Text amendments that are purely administrative or procedural do not require a public hearing, nor do they require preliminary review or recommendations by the Planning Commission and can therefore be presented directly to City Council for action.

18.68.040 Rezone (zoning map amendment) approval criteria.

There is no presumption of validity for a rezone (zoning map amendment) and the applicant has the burden of proof in establishing compliance with all of the following criteria:

- A. The rezone implements the policies of the Comprehensive Plan; or
- B. The rezone is necessary due to a substantial change in circumstances since the original zoning; and
- C. The rezone bears a substantial relationship to the public health, safety, or welfare.

18.68.050 Amendments to rezone requests.

Prior to adoption of a rezone ordinance, a requested rezone may be changed, conditioned or modified by the hearing examiner, Planning Commission, or city council when under their appropriate jurisdiction without requiring additional hearings, subject to the following:

- A. The modification or change shall not result in a more intense zone than the one requested; or
- B. The area of the request shall not be enlarged, however, the area may be lessened.

18.68.060 Contract rezones.

In order to mitigate any impacts that may result from a rezone the city may enter into a contract with the property owner. The contract shall outline the conditions of approval and the obligations of the property owner. The contract shall be binding upon the owner and his heirs, assigns and successors. The contract shall run with the land, be signed by the property owner(s) and be recorded with the appropriate King County office, for properties located in King County, or recorded at the appropriate Pierce County office for properties located in Pierce County. Any amendments to the contract shall be approved by the city council. The preferred form of the contract rezone is a development agreement as authorized by RCW 36.70B.170 - .210 and WAC 365-196-845.

18.02.080 Zoning map.

A. "Zoning map," as used in this title, is that certain map, three copies of which are on file in the office of the city clerk, labeled "Comprehensive Zoning Map of the City of Auburn, Washington," dated June 1, 1987, and adopted by Ordinance No. 4230 and signed by the mayor and city clerk, along with all amendments thereto. The types of zoning map amendments are listed in ACC 18.68.030 (A).

B. Current copies of the zoning map are available for examination and/or purchase at the community development department. The zoning map is adopted and made a part of the comprehensive zoning ordinance, with the most current amended copy serving as the official zoning map.

18.36.020 Process.

The approval process for business parks is in two steps. The first step in the conceptual approval of the business park, by the hearing examiner and city council, this step also approves the rezone to the business park district. The second step is the approval of the site plan by the planning director.

A. Conceptual Approval.

1. Conceptual approval of a business park shall be applied by the rezone process as specified in ACC 18.68.030(A)(1). The rezone shall be a contract rezone and shall include an agreement that establishes the type, square footage and general location of the uses; the location and size of the park; restrictive covenants; public improvements; and the responsibilities of the owner/developer.
2. A BP district shall only be approved when the owner/developer has demonstrated that a public benefit will result and the project contains architectural, site, and landscape design standards that are significantly superior to those typically required in the other industrial and commercial zones.
3. No significant impacts on the public infrastructure shall occur that cannot be effectively mitigated by the development of the business park.
4. If the approval of the business park requires a subdivision of property, the preliminary plat may be processed concurrently.

2.46.035 Powers and areas of jurisdiction.

The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact, conclusions based upon those facts and enter decisions as provided by ordinance. Notwithstanding any other provision in the Auburn City Code, the hearing examiner's areas of jurisdiction shall include those matters contained in this chapter.

A. The decision of the hearing examiner on the following matters shall be final:

1. Appeals of assessed civil penalties. (ACC 1.25.065(E))¹
2. Appeals regarding the city's decision on refunds from the construction sales tax exemption. (ACC 3.60.036(F))
3. Appeals from the planning director's denial of an application for a multifamily tax exemption (MFTE). (ACC 3.94.070(F))
4. Appeals from the planning director's denial of an extension of a conditional certificate for MFTE. (ACC 3.94.090(B))
5. Appeals of a dangerous dog determination. (ACC 6.35.020(D))

6. Appeals of a decision by the planning director regarding expansion of hours for construction noise. (ACC 8.28.010(B) (8) (d))
7. Appeals of a decision by the city engineer regarding construction permits. (ACC 12.24.090(C))
8. Appeals of a decision by the city engineer regarding undergrounding of utilities. (ACC 13.32A.130(D))
9. Appeals of decisions by the building official or fire code official regarding building and code violations. (ACC 15.07.130)¹
10. Applications for a shoreline conditional use permit (Shoreline Master Program Section 6.1.8) and/or a shoreline variance (Shoreline Master Program Section 6.1.9) (note that, by statutes, the State Department of Ecology has final approval authority).

B. The decision of the hearing examiner on the following matters shall be final unless such decision is appealed to the city council as provided in this chapter:

1. Appeals from denial, civil penalty suspension or revocation of a business license. (ACC 5.15.070)
 2. Appeals from denial of a rental housing business license. (ACC 5.22.060(D))
 3. Appeals from revocation or notice of intent to revoke a rental housing business license. (ACC 5.22.080(B))
- C. The decision of the hearing examiner on the following matters shall be the final administrative decision of the city:
1. Appeals from the planning director's denial of a final certificate for multifamily property tax exemption (MFTE). (ACC 3.94.100(G))
 2. Appeals from the planning director's cancellation of a tax exemption for MFTE. (ACC 3.94.120(C))
 3. Appeals of a decision by the public works director regarding commute trip reductions. (ACC 10.02.120)
 4. Appeals from denial of an adult entertainment establishment license, issuance or renewal. (ACC 5.30.070)
 5. Appeals of a decision by the public works director regarding required public improvements. (ACC 12.64A.060)
 6. Appeals of a decision by the public works director regarding system development charges. (ACC 13.41.070)
 7. Hear and resolve tenant complaints against landlords regarding utility billing practices (third party billing). (ACC 13.52.050)
 8. Appeals of a decision by the planning director on a relocation report and plan related to the closure of a mobile home park. (ACC 14.20.120)
 9. Appeals of a decision by the floodplain administrator on floodplain development permits. (ACC 15.68.125)
 10. Appeals of a decision by the landmarks and heritage commission on historical designations. (ACC 15.76.040)

11. Appeals of a decision by the SEPA responsible official on threshold determinations (ACC 16.06.250) – public hearing needed.
 12. Appeals from critical area review decisions. (ACC 16.10.140)
 13. Applications for a reasonable use exception due to critical area regulations. (ACC 16.10.150)
 14. Applications for a buffer width variance of critical areas regulations which exceeds 10 percent of a quantifiable standard. (ACC 16.10.160)
 15. Applications for a public agency special exception to critical area regulations. (ACC 16.10.170)
 16. Appeals from a decision of the planning director regarding boundary line adjustments. (ACC 17.06.030)
 17. Applications for a preliminary plat. (ACC 17.10.050)
 18. Applications for modification of standards and specifications related to a preliminary plat. (ACC 17.18.010)
 19. Applications for alteration of any subdivision. (ACC 17.20.030)
 20. Appeals from a decision of the planning director regarding site plan approval of a business park. (ACC 18.36.020(B))
 21. Applications for a special home occupation permit. (ACC 18.60.040(A))
 22. Applications for a surface mining permit. (ACC 18.62.030)
 23. Appeals from a decision of the planning director regarding administrative use permits. (ACC 18.64.020(A))
 24. Applications for a conditional use permit. (ACC 18.64.020(B))
 25. Applications for a variance. (ACC 18.70.010)
 26. Appeals from a decision of the planning director regarding administrative variances. (ACC 18.70.015)
 27. Applications for a special exception. (ACC 18.70.020)
 28. Applications for a variance in the regulatory floodplain. (ACC 18.70.025)
 29. Appeals from any administrative decision under ACC Title 18, Zoning. (ACC 18.70.050)
 30. Appeals from a decision of the planning director regarding fire impact fees. (ACC 19.06.080)
 31. Appeals from a decision of the parks director regarding park impact fees. (ACC 19.08.040)
- D. On the following matters, the hearing examiner shall enter findings of fact, conclusions of law, and recommendations to the city council:
1. Applications for vacating a subdivision or portion of a subdivision, or any land dedicated for public use, except rights-of-way associated with public streets. (ACC 17.22.030)

2. Application for a business park (conceptual approval). (ACC 18.36.020(A))
3. Applications for a Site-Specific Rezone, Category 1. (ACC 18.68.030(A) (1))
4. Applications for major amendments to the Lakeland Hills PUD. (ACC 18.76.130)

¹ The appeal shall be processed and the hearing conducted according to the provisions of ACC 15.07.130.

14.03.040 Type IV decisions.

Type IV decisions are quasi-judicial decisions made by the city council following a recommendation by the hearing examiner. Type IV decisions include, but are not limited to, the following project applications:

Site Specific Rezone, Category 1.

EXHIBIT 1

Chapter 18.68 ZONING MAP AND TEXT AMENDMENTS

Sections:

- 18.68.010 ~~Intent~~Purpose.
- 18.68.020 ~~Initiation of~~Zoning map amendments.
- 18.68.025 Zoning text amendments.
- 18.68.030 ~~Public hearing process~~Types of amendments and processing.
- 18.68.040 ~~Public hearing notice requirements~~Rezone approval criteria.
- 18.68.050 Amendments to rezone requests.
- 18.68.060 Contract rezones.

18.68.010 ~~Intent~~Purpose.

The purpose of this chapter is to ~~provide for~~establish a process to amend either the text or map of this title. An amendment of the zoning map is also referred to as a "rezone" as used elsewhere in this title.

18.68.020 ~~Initiation of~~Zoning map amendments.

~~A. Zoning Map.~~ amendments may be initiated by the City or one or more property owners. Applications from property owners must include valid authorization from all of the subject property owners involved in the application.

- ~~1. One or more property owners of the parcel may submit an application requesting a reclassification of the parcel;~~
- ~~2. The city council may request the planning commission or hearing examiner to conduct a public hearing on the reclassification of a parcel or parcels of property;~~
- ~~3. The planning commission may upon its own motion call for a public hearing on the reclassification of a parcel or parcels of property.~~

18.68.025 Zoning text amendments.

~~B. Text~~ amendments may be initiated by the City or the public.

- ~~1. The city council may request the planning commission to conduct a public hearing to amend any portion or all of this title; provided, that text amendments that are purely administrative or procedural do not require a public hearing, nor do they require preliminary review or recommendations of the planning commission;~~
- ~~2. The planning commission may upon its own motion call for a public hearing to amend any portion or all of this title, with the exception of purely administrative or procedural amendments;~~
- ~~3. Any resident or property owner of the city~~A. City-initiated text amendments.

EXHIBIT 1

1. The Director may ~~petition the city to request~~ initiate an amendment to the text of this title ~~for the following purposes:~~

a~~C~~. Change the text to increase consistency with the Comprehensive Plan in compliance with ACC 14.22.050, 'Conformance and consistency'.

b. Change the text in response to changes in state and/or federal laws.

c. Change the text to correct errors, which are determined by the Director to be substantive and beyond a scrivener's error.

d. Change the text to increase internal consistency of this title (Zoning Code).

2. The Mayor may request the Director to initiate an amendment to the text of this title, or by the request of the Mayor on behalf of the City Council or the Planning Commission.

B. Public-initiated text amendments.

1. Any member of the public may submit an application requesting to amend the text of this Title using the City's established application process.

18.68.030 Types of amendments and processing.

There are three types of map amendments and two types of text amendments; the descriptions and processing procedures for these shall be as follows:

A. Map amendment types:

1. A "Site-Specific Rezone, Category 1", is an application requesting to rezone a property to a zoning district that implements the Comprehensive Plan land use map designation applied to the property. This type of rezone shall be processed as a Type IV decision, consistent with ACC 14.03.040.

2. A "Site-Specific Rezone, Category 2", is an application requesting to rezone a property to a zoning district that does not implement (i.e. is in conflict with) the existing Comprehensive Plan land use map designation applied to the property, and a concurrent Comprehensive Plan amendment application must be submitted. This type of rezone shall be processed as a legislative non-project decision, consistent with ACC 14.03.060.

3. An "Area-Wide Rezone" is a rezone initiated either by the City or by multiple property owners that applies to a significant number of properties, as determined by the Director. This type of rezone shall be processed as a legislative non-project decision, consistent with ACC 14.03.060.

B. A "Zoning Text Amendment" is an application to change the text of Title 18 ACC. This type of application or initiation shall be processed as a legislative non-project decision, consistent with ACC 14.03.060. Public notice shall be provided consistent with Title 14 ACC.

1. Substantive zoning text amendments. For the purposes of this chapter, substantive zoning text amendments shall be distinguished from procedural or administrative amendments in accordance with the following:

"Substantive" matters relate to regulations that define or limit what can be done in terms of conduct, use or action (e.g., what land use may be made of ~~land~~ property, what requirements apply to development, and what public infrastructure may be required of certain developments), ~~and~~

EXHIBIT 1

~~“Procedural” or “administrative” matters are those that relate to the process of how an application to take such action must be pursued (e.g., time limits for applications, decisions and appeals, what forms must be used, and where or how applications must be submitted. Essentially, “procedural” or “administrative” matters are the mechanical rules by which substantive issues may be pursued). Substantive text amendments shall be reviewed by the Planning Commission and the Planning Commission shall conduct a public hearing and make a recommendation before being presented to the City Council for consideration and action.~~

18.68.030 Public hearing process.

~~A.2. Procedural zoning text amendments. Text amendments. With the exception of that are purely administrative or procedural amendments, do not require a public hearing, nor do they require preliminary review or recommendations by the Planning Commission and can therefore be presented directly to City Council for action.~~

18.68.040 Rezone (zoning map amendment) approval criteria.

~~There is no presumption of validity for a rezone (zoning map amendment) and the applicant has the burden of proof in establishing compliance with all of the following criteria:~~

- ~~A. The rezone implements the policies of the Comprehensive Plan; or~~
- ~~B. The rezone is necessary due to a substantial change in circumstances since the original zoning; and~~
- ~~C. The rezone bears a substantial relationship to the public health, safety, or welfare.~~

~~All amendments to this title. The planning commission shall make a recommendation to the city council, who may or may not conduct a public hearing.~~

B. Zoning Map Amendments.

~~1. Rezones Initiated by an Applicant Other Than City. All applications for a rezone shall be reviewed by the planning director prior to the scheduling of a public hearing. After review of the application, the director shall determine which of the following two processes should occur to properly hear the rezone:~~

~~a. If the rezone is consistent with the Comprehensive Plan, then the hearing examiner shall conduct a public hearing on the rezone and make a recommendation to the city council pursuant to ACC 2.46.170;~~

~~b. If the rezone is in conflict with the comprehensive plan, or there are no policies that relate to the rezone, or the policies are not complete, then a comprehensive plan map amendment shall also be required. The planning commission shall conduct a public hearing on the comprehensive plan map amendment and the rezone concurrently and make a recommendation to the city council;~~

EXHIBIT 1

~~2. Areawide Zoning and Rezoning, Initiated by the City. The planning commission shall conduct a public hearing and make a recommendation to the city council. If applicable, a comprehensive plan amendment may also be processed.~~

~~C. City Council Decision. The city council may affirm, modify or disaffirm any recommendation of the planning commission or hearing examiner with regard to amendments of the text or map of this title.~~

~~18.68.040 Public hearing notice requirements.~~

~~A. Text Amendments.~~

~~1. Planning Commission. For text amendments that require a public hearing under ACC 18.68.030(A), notice of a public hearing shall be given by publication, in a newspaper of general circulation in the area, at least 10 days prior to the public hearing and by posting the notice in three general public locations.~~

~~2. City Council. Notice of a public hearing shall be given by publication, in a newspaper of general circulation in the area, prior to the public hearing and by posting the notice in three general public locations.~~

~~B. Zoning Map Amendments.~~

~~1. Rezones Initiated by an Applicant Other Than City.~~

~~a. Hearing Examiner. Notice of a public hearing shall be given at least 10 days prior to the public hearing and in accordance with ACC 14.07.040.~~

~~b. Planning Commission. Rezones that are considered concurrent with a comprehensive plan land use map amendment shall provide, at a minimum, notice of public hearing by publication in a newspaper of general circulation at least 10 days prior to the public hearing. Additionally, notice shall be provided in accordance with ACC 14.07.040.~~

~~2. Rezones, Including Areawide Zoning, Initiated by the City.~~

~~a. Planning Commission. As a minimum, notice of public hearing shall be given by publication, in a newspaper of general circulation in the area, at least 10 days prior to the public hearing. Additional mailing or posting of notices may, at the option of the planning commission, be required.~~

~~b. City Council. As a minimum, notice of public hearing shall be given by publication, in a newspaper of general circulation in the area, prior to the public hearing. Additional mailing or posting of the notices may, at the option of the city council, be required.~~

~~18.68.050 Amendments to rezone requests.~~

~~Prior to adoption of a rezone ordinance, aA requested rezone may be changed, conditioned or modified by the hearing examiner, Planning Commission, or city council when under their appropriate jurisdiction without requiring additional hearings, to those previously prescribed subject to the following:~~

EXHIBIT 1

A. The modification or change shall not result in a more intense zone than the one requested; or

B. The area of the request shall not be enlarged, however, the area may be lessened.

18.68.060 Contract rezones.

In order to mitigate any impacts that may result from a rezone the city may enter into a contract with the property owner. The contract shall outline the conditions of approval and the obligations of the property owner. The contract shall be binding upon the owner and his heirs, assigns and successors. The contract shall run with the land, be signed by the property owner(s) and be recorded with the appropriate King County office, for properties located in King County, or recorded at the appropriate Pierce County office for properties located in Pierce County. Any amendments to the contract shall be approved by the city council. The preferred form of the contract rezone is a development agreement as authorized by RCW 36.70B.170 - .210 and WAC 365-196-845.

18.02.080 Zoning map.

A. "Zoning map," as used in this title, is that certain map, three copies of which are on file in the office of the city clerk, labeled "Comprehensive Zoning Map of the City of Auburn, Washington," dated June 1, 1987, and adopted by Ordinance No. 4230 and signed by the mayor and city clerk, along with all amendments thereto. ~~The~~two types of zoning map amendments are listed in ACC 18.68.030 (A) to the zoning map may occur. The map may be either amended on an areawide basis initiated by the planning commission, city council, or planning and development committee of the city council, or a specific parcel amended by the rezone process as outlined in Chapter 18.68 ACC.

B. Current copies of the zoning map are available for examination and/or purchase at the ~~planning and community~~ development department. The zoning map is adopted and made a part of the comprehensive zoning ordinance, with the most current amended copy serving as ~~being~~ the official zoning map.

18.36.020 Process.

The approval process for business parks is in two steps. The first step in the conceptual approval of the business park, by the hearing examiner and city council, this step also approves the rezone to the business park district. The second step is the approval of the site plan by the planning director.

A. Conceptual Approval.

EXHIBIT 1

1. Conceptual approval of a business park shall be applied by the rezone process as specified in ACC 18.68.030 ~~(BA)~~ (1) ~~(a)~~. The rezone shall be a contract rezone and shall include an agreement that establishes the type, square footage and general location of the uses; the location and size of the park; restrictive covenants; public improvements; and the responsibilities of the owner/developer.
2. A BP district shall only be approved when the owner/developer has demonstrated that a public benefit will result and the project contains architectural, site, and landscape design standards that are significantly superior to those typically required in the other industrial and commercial zones.
3. No significant impacts on the public infrastructure shall occur that cannot be effectively mitigated by the development of the business park.
4. If the approval of the business park requires a subdivision of property, the preliminary plat may be processed concurrently.

2.46.035 Powers and areas of jurisdiction.

The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact, conclusions based upon those facts and enter decisions as provided by ordinance. Notwithstanding any other provision in the Auburn City Code, the hearing examiner's areas of jurisdiction shall include those matters contained in this chapter.

A. The decision of the hearing examiner on the following matters shall be final:

1. Appeals of assessed civil penalties. (ACC 1.25.065(E))¹
2. Appeals regarding the city's decision on refunds from the construction sales tax exemption. (ACC 3.60.036(F))
3. Appeals from the planning director's denial of an application for a multifamily tax exemption (MFTE). (ACC 3.94.070(F))
4. Appeals from the planning director's denial of an extension of a conditional certificate for MFTE. (ACC 3.94.090(B))
5. Appeals of a dangerous dog determination. (ACC 6.35.020(D))
6. Appeals of a decision by the planning director regarding expansion of hours for construction noise. (ACC 8.28.010(B) (8) (d))
7. Appeals of a decision by the city engineer regarding construction permits. (ACC 12.24.090(C))
8. Appeals of a decision by the city engineer regarding undergrounding of utilities. (ACC 13.32A.130(D))
9. Appeals of decisions by the building official or fire code official regarding building and code violations. (ACC 15.07.130)¹
10. Applications for a shoreline conditional use permit (Shoreline Master Program Section ~~ACC 16.01.8-054~~) and/or a shoreline variance (Shoreline

EXHIBIT 1

Master Program Section 6.1.9) (note that, by statutes, the State Department of Ecology has final approval authority).

B. The decision of the hearing examiner on the following matters shall be final unless such decision is appealed to the city council as provided in this chapter:

1. Appeals from denial, civil penalty suspension or revocation of a business license. (ACC 5.15.070)
2. Appeals from denial of a rental housing business license. (ACC 5.22.060 (D))
3. Appeals from revocation or notice of intent to revoke a rental housing business license. (ACC 5.22.080 (B))

C. The decision of the hearing examiner on the following matters shall be the final administrative decision of the city:

1. Appeals from the planning director's denial of a final certificate for multifamily property tax exemption (MFTE). (ACC 3.94.100 (G))
2. Appeals from the planning director's cancellation of a tax exemption for MFTE. (ACC 3.94.120 (C))
3. Appeals of a decision by the public works director regarding commute trip reductions. (ACC 10.02.120)
4. Appeals from denial of an adult entertainment establishment license, issuance or renewal. (ACC 5.30.070)
5. Appeals of a decision by the public works director regarding required public improvements. (ACC 12.64A.060)
6. Appeals of a decision by the public works director regarding system development charges. (ACC 13.41.070)
7. Hear and resolve tenant complaints against landlords regarding utility billing practices (third party billing). (ACC 13.52.050)
8. Appeals of a decision by the planning director on a relocation report and plan related to the closure of a mobile home park. (ACC 14.20.120)
9. Appeals of a decision by the floodplain administrator on floodplain development permits. (ACC 15.68.125)
10. Appeals of a decision by the landmarks and heritage commission on historical designations. (ACC 15.76.040)
11. Appeals of a decision by the SEPA responsible official on threshold determinations (ACC 16.06.250) - public hearing needed.
12. Appeals from critical area review decisions. (ACC 16.10.140)
13. Applications for a reasonable use exception due to critical area regulations. (ACC 16.10.150)
14. Applications for a buffer width variance of critical areas regulations which exceeds 10 percent of a quantifiable standard. (ACC 16.10.160)
15. Applications for a public agency special exception to critical area regulations. (ACC 16.10.170)

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16. Appeals from a decision of the planning director regarding boundary line adjustments. (ACC 17.06.030)
17. Applications for a preliminary plat. (ACC 17.10.050)
18. Applications for modification of standards and specifications related to a preliminary plat. (ACC 17.18.010)
19. Applications for alteration of any subdivision. (ACC 17.20.030)
20. Appeals from a decision of the planning director regarding site plan approval of a business park. (ACC 18.36.020(B))
21. Applications for a special home occupation permit. (ACC 18.60.040(A))
22. Applications for a surface mining permit. (ACC 18.62.030)
23. Appeals from a decision of the planning director regarding administrative use permits. (ACC 18.64.020(A))
24. Applications for a conditional use permit. (ACC 18.64.020(B))
25. Applications for a variance. (ACC 18.70.010)
26. Appeals from a decision of the planning director regarding administrative variances. (ACC 18.70.015)
27. Applications for a special exception. (ACC 18.70.020)
28. Applications for a variance in the regulatory floodplain. (ACC 18.70.025)
29. Appeals from any administrative decision under ACC Title 18, Zoning. (ACC 18.70.050)
30. Appeals from a decision of the planning director regarding fire impact fees. (ACC 19.06.080)
31. Appeals from a decision of the parks director regarding park impact fees. (ACC 19.08.040)
- D. On the following matters, the hearing examiner shall enter findings of fact, conclusions of law, and recommendations to the city council:
 1. Applications for vacating a subdivision or portion of a subdivision, or any land dedicated for public use, except rights-of-way associated with public streets. (ACC 17.22.030)
 2. Application for a business park (conceptual approval). (ACC 18.36.020(A))
 3. Applications for a Site-Specific #Rezoning, Category 1 ~~(zoning map amendment) initiated by an applicant other than the city.~~ (ACC 18.68.030(A)(1))
 4. Applications for major amendments to the Lakeland Hills PUD. (ACC 18.76.130)

¹ The appeal shall be processed and the hearing conducted according to the provisions of ACC 15.07.130.

14.03.040 Type IV decisions.

Type IV decisions are quasi-judicial decisions made by the city council following a recommendation by the hearing examiner. Type IV decisions include, but are not limited to, the following project applications:

Site Specific Rezone, Category 1 ~~(site-specific)~~.

Further Background on the Types of Rezones

There are three types of rezones, which are as follows:

- If the rezone request implements the Comprehensive Plan (Comp. Plan) (It is a zoning classification listed in the Comp. Plan as implementing the particular Comp. Plan Land Use Map designation (See Land Use Map)) then the request is forwarded to the Hearing Examiner for his consideration. The Hearing Examiner, after a public hearing, then makes a recommendation to the City Council, who make the final decision. Under the proposed changes this would be referred to as a ***“Site-Specific Rezone, Category 1”***. An example of this would be a property zoned “R-10, Residential” which has a Comp. Plan Land Use Map designation of “Light Commercial”; the owner could submit a rezone application to change the zoning of the property to “C-1, Light Commercial” as this request would be implementing the Comp. Plan.
- If the rezone request does not implement the Comp Plan (in other words if in the above described situation the Land Use Map designation was “Moderate Density Residential” instead of “Light Commercial”) then the owner would also have to simultaneously apply for a Comp. Plan amendment. This is the type of request that the Planning Commission is used to considering. Instead of the Hearing Examiner making the recommendation to the City Council, the Planning Commission does. Under the proposed changes this would be referred to as a ***“Site-Specific Rezone, Category 2”***.
- The third type of rezone is referred to as an ***“Area-Wide Rezone”***. These are typically utilized when there have been changes in the Comp. Plan or the Zoning Code that necessitate all properties with a particular zoning classification to be changed. These are generally City-initiated and occur over a larger geographic area rather than one or a few parcels. The most recent instance of this was removal of the “EP, Environmental Park” zone from the Comp Plan, which then resulted in an Area-Wide Rezone which the Planning Commission considered (and recommended approval of) in 2017.

Lastly, there are currently there no decision-making criteria for rezone requests in the City’s Zoning Code; however, Staff for the last several years has used three criteria that are the result of case-law. These three criteria that are based on past court decisions are proposed to be included in the changes under ACC 18.68.040, ‘Rezone Approval Criteria’.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Community Development Block Grant 2019 CAPER (Tate) (15 Minutes)

Date:

July 7, 2020

Department:

Community Development

Attachments:

[1. CAPER Overview](#)

[2. 2019 CAPER Final](#)

[3. 2019 PR26 Financial Summary Report](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

n/a

Background Summary:

The City of Auburn's use of Community Development Block Grant (CDBG) funds is guided by a 5-year Strategic Plan and Annual Action Plans. Every year, the City is required to submit a Consolidated Annual Performance and Evaluation Report (CAPER) to the Department of Housing and Urban Development (HUD) reporting on the progress the City has made in carrying out its Strategic Plan and Action Plan during the prior program year. Auburn's most recent CAPER reported on progress toward goals and objectives during the January 1, 2019 – December 31, 2019 program year.

This presentation will describe the major components of the 2019 CAPER, and provide an overview of how funds were spent and what targets were achieved during the 2019 program year.

Reviewed by Council Committees:

Councilmember: Trout-Manuel

Staff:

Tate

Meeting Date: July 13, 2020

Item Number:

COMMUNITY SERVICES

**COMMUNITY
DEVELOPMENT BLOCK
GRANT 2019 CAPER**

**JOY SCOTT
CITY COUNCIL STUDY SESSION
JULY 13, 2020**

Department of Community Development
Planning • Building • Development Engineering • Permit Center
Sustainability • Community Services • Code Enforcement

AUBURN
VALUES

S E R V I C E

E N V I R O N M E N T

E C O N O M Y

C H A R A C T E R

S U S T A I N A B I L I T Y

W E L L N E S S

C E L E B R A T I O N

GENERAL FUND VS CDBG



■ General Fund Human Services dollars

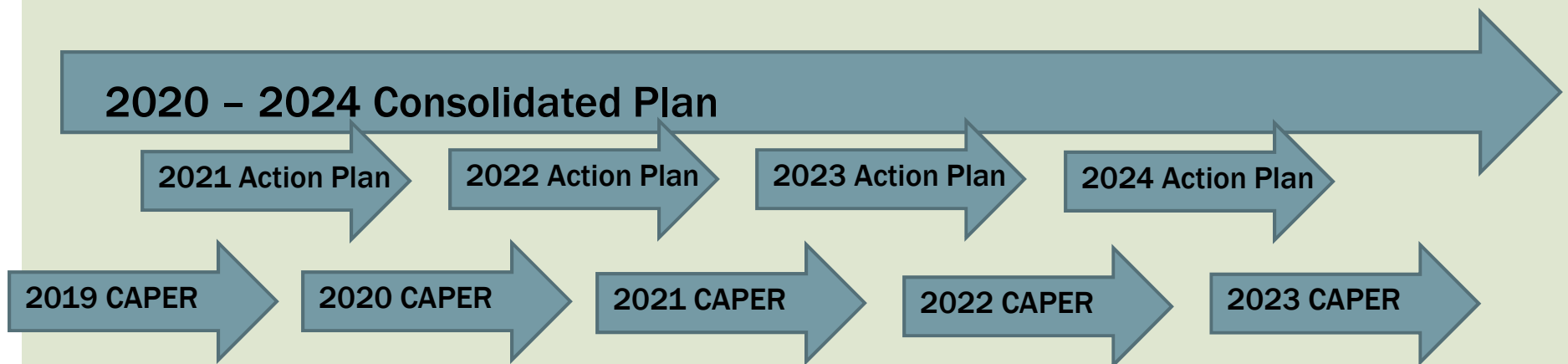
- \$490,000
- Competitive funding for direct service nonprofit agencies
- Guided by Human Services Funding Priorities set by Council
- Approved by City Council every other year during budget process

■ CDBG dollars

- \$595,742*
- Funds support city's Housing Repair program, public facility ADA improvements, public services (limited), and some economic development activities
- Guided by Consolidated Plan and Annual Action Plans
- Approved by City Council every year

WHAT IS THE CAPER?

The Consolidated Annual Performance and Evaluation Report provides an overview of the progress the jurisdiction has made in carrying out its strategic plan and its action plan during the prior program year. The CAPER is a requirement of the U.S. Department of Housing and Urban Development (HUD), through which Auburn receives an annual entitlement, or formula grant, from the Community Development Block Grant (CDBG) program.



CDBG ADMINISTRATIVE REQUIREMENTS

- Five Year Consolidated Plan
- Eligibility Reviews
- Annual Action Plans
- **Consolidated Annual Performance Evaluation Report (CAPER)**
- Annual Subrecipient Monitoring
- Financial Management
- Project Management
 - Environmental Reviews
 - Procurement Procedure
 - Lead Mitigation

COMMUNITY DEVELOPMENT BLOCK GRANT

The CDBG Entitlement Program provides annual grants on a formula basis to entitled cities to develop viable urban communities.

Projects must:

- Align with HUD's National Objectives
- Be eligible under HUD's guidelines
- Benefit low and moderate income persons

- **Acquisition of Real Property**
- **Public Facility ADA improvements**
- **Site Preparation**
- **Public Services (up to 15% of annual allocation)**
- **Home Rehabilitation**
- **Economic Development Activities**
- **Job Creation for Low-Income Individuals**
- **Microenterprise Assistance**
- **Homeownership Assistance**
- **Planning and Capacity Building**
- **Program Admin Costs (up to 20% of annual allocation)**

**EXAMPLES
OF
ELIGIBLE
ACTIVITIES
FOR CBDG
FUNDS**

WHAT DID CDBG FUNDS SUPPORT IN 2019?

- The City's Minor Housing Repair Program
- Sidewalk ADA improvements at three sites
- Health and dental services for un- and underinsured low-income Auburn residents
- Job training and placement services for low-income Auburn residents
- Planning and administration costs (City staff time)

KEY FACTS AND FIGURES:

PEOPLE SERVED

- 59 Households supported through rehab of existing units (Housing Repair program)
 - 36 Households categorized as “Extremely Low Income”
 - 23 Households categorized as “Low Income”
- 122 Auburn residents provided with medical services across 216 visits (Healthpoint)
- 54 Auburn residents provided with dental services across 145 visits (Healthpoint)
- 9 Auburn residents provided with employment training and case management services (Multi-Service Center)

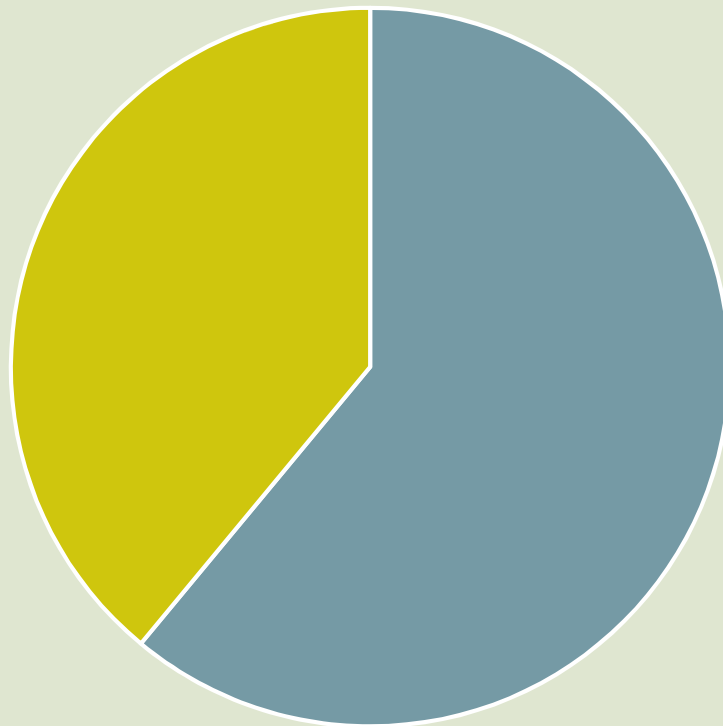
AUBURN'S HOUSING REPAIR PROGRAM

To qualify applicants must:

- Live inside Auburn city limits
- Own home needing repairs
- Have lived there at least one year & plan to stay at least one year after repairs are done
- Meet income guidelines
 - 30% King County median income = up to \$25,100/year for one person
 - 50% King County median income = up to \$41,800/year for one person
- Once approved can access funds for up to 3 years

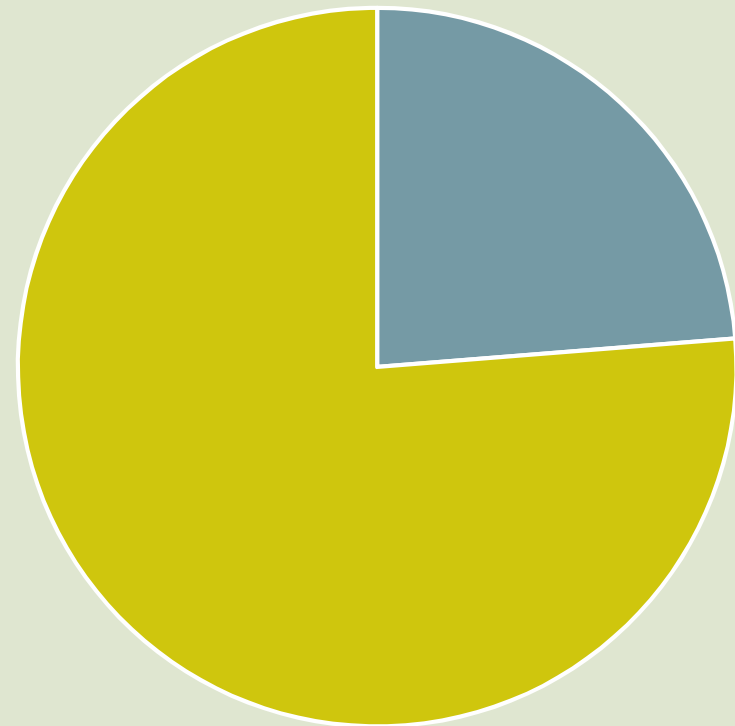
2019 HOUSING REPAIR DATA

Income level



■ Under 30% AMI ■ 30-50% AMI

Age

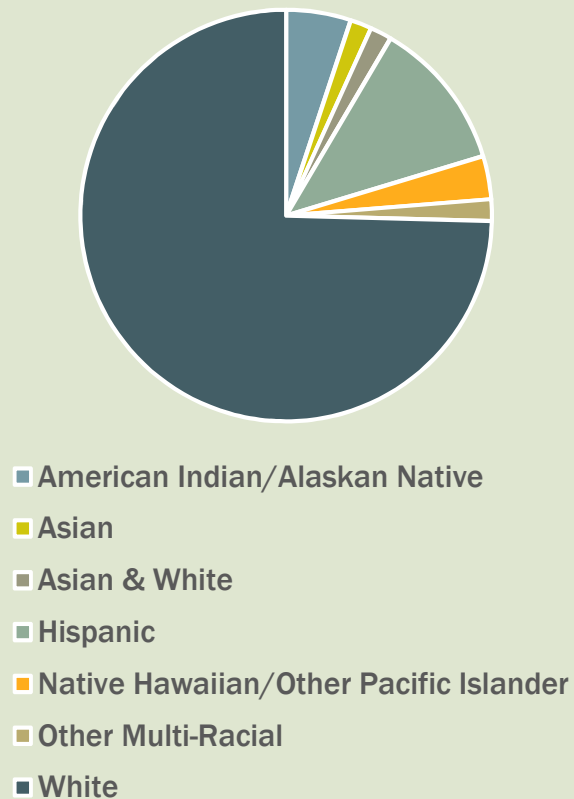


■ Under 62 ■ 62 and Over

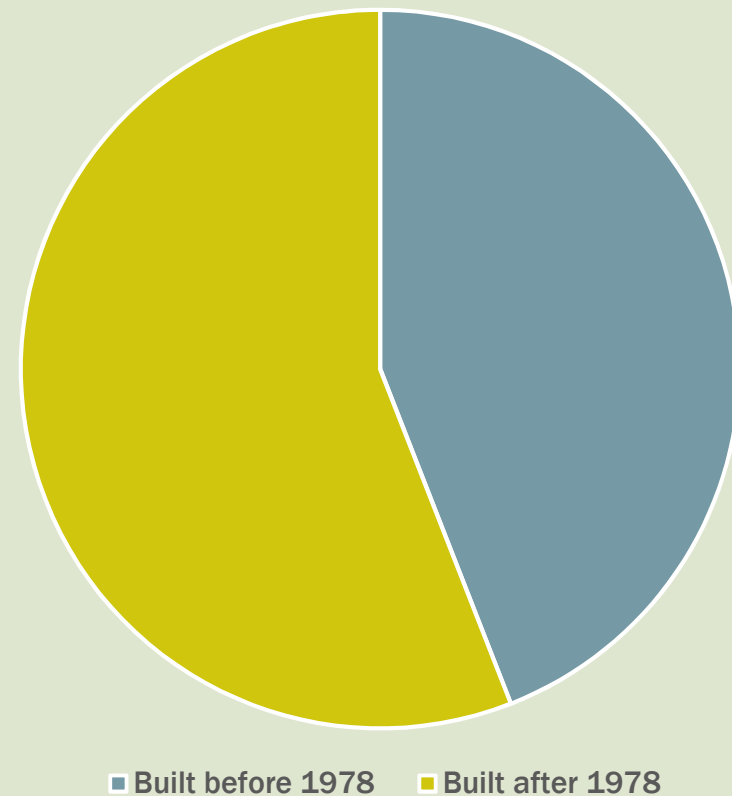
SERVICE • ENVIRONMENT • ECONOMY • CHARACTER • SUSTAINABILITY • WELLNESS • CELEBRATION

2019 HOUSING REPAIR DATA

Ethnicity (HUD Categories)



Age of Housing



CDBG DOLLARS AT WORK:

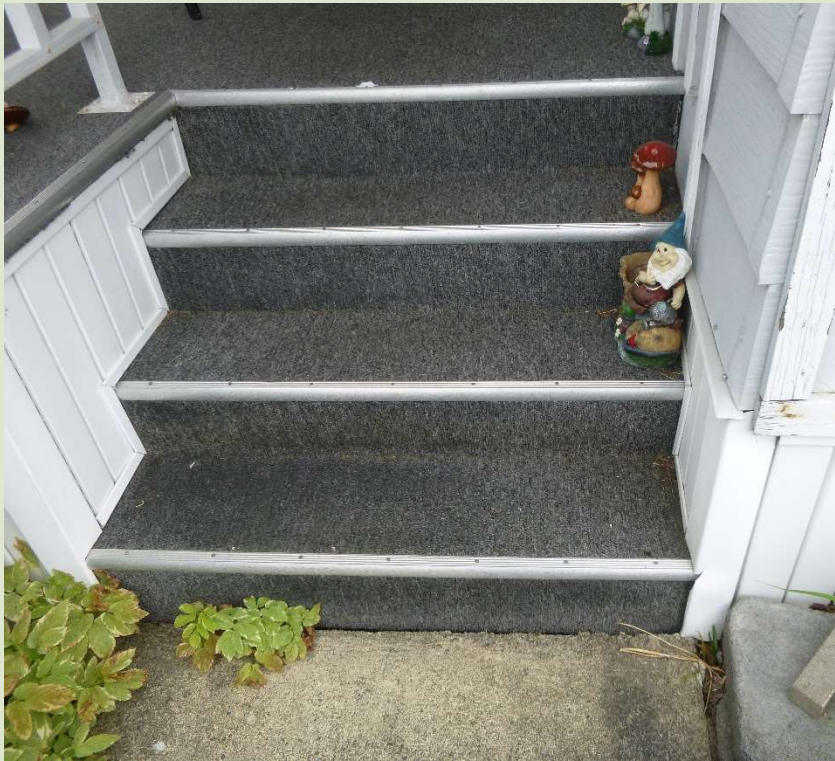
HOUSING REPAIR



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CDBG DOLLARS AT WORK:

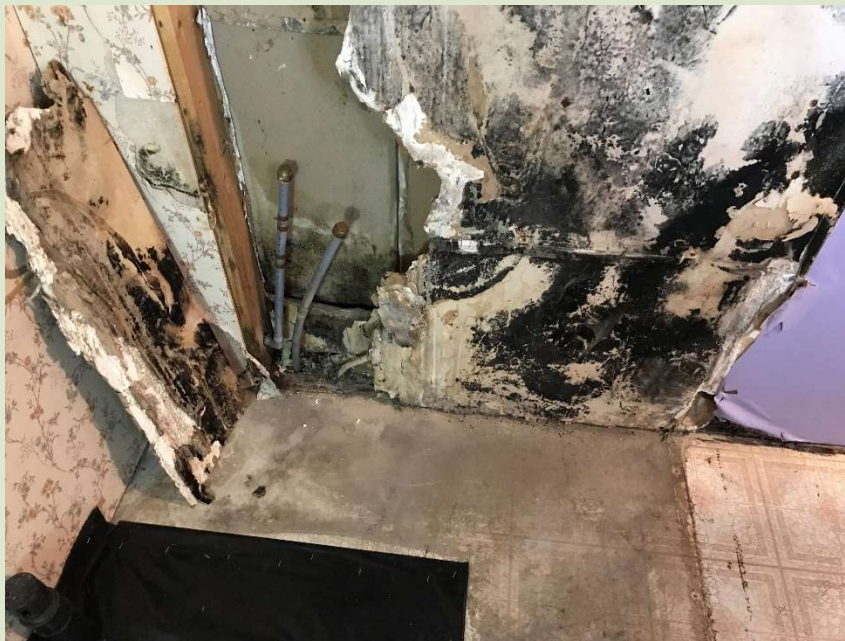
HOUSING REPAIR



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CDBG DOLLARS AT WORK:

HOUSING REPAIR



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CDBG DOLLARS AT WORK:

ADA IMPROVEMENTS: 10TH ST & D ST NE



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CDBG DOLLARS AT WORK:

ADA IMPROVEMENTS



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CDBG DOLLARS AT WORK:

ADA IMPROVEMENTS: K ST SE



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QUESTIONS?

Joy Scott

Community Services Manager

253-876-1965

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CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

This report discusses program outcomes for the City of Auburn 2019 program year utilizing Community Development Block Grant (CDBG) Entitlement funds. The city continues to make progress with these funds in increasing the supply of homeless prevention and public services. In addition, the city has continued to increase its emergency and affordable housing options. The data provided below discusses public services, supporting decent, affordable housing and homelessness prevention.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
End Homelessness	Homeless	CDBG: \$90000	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	0	241		13	241	1,853.85%
End Homelessness	Homeless	CDBG: \$90000	Homeless Person Overnight Shelter	Persons Assisted	5	0	0.00%	5	0	0.00%
End Homelessness	Homeless	CDBG: \$90000	Homelessness Prevention	Persons Assisted	60	338	563.33%	150	0	0.00%

End Homelessness	Homeless	CDBG: \$90000	Jobs created/retained	Jobs	0	33		15	0	0.00%
Ensure a Suitable Living Environment	Non-Housing Community Development		Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	300	119	39.67%			
Ensure a Suitable Living Environment	Non-Housing Community Development		Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	0	55				
Ensure a Suitable Living Environment	Non-Housing Community Development		Businesses assisted	Businesses Assisted	0	15				
Ensure Decent, Affordable Housing	Affordable Housing Public Housing	CDBG: \$414000	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	20	50	250.00%			
Ensure Decent, Affordable Housing	Affordable Housing Public Housing	CDBG: \$414000	Homeowner Housing Rehabilitated	Household Housing Unit	80	266	332.50%	45	59	131.11%

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan,

giving special attention to the highest priority activities identified.

Consistent with the priorities and specific objectives outlined in the 2019 Annual Action Plan, the City allocates the largest share of its HUD funds to its homeowner housing rehabilitation program. As the city's largest homeless prevention program, the activity is consistent with the focus of the CDBG housing and homeless prevention programs. The program provides support to over 50 low income homeowners each year. The majority of program applicants are seniors, individuals with disabilities, or Veterans. For many residents, these repairs allow them to affordably stay in their homes and age in the community where they have established support systems. During the 2019 program year, our homeowner housing rehabilitation program underwent a significant change. Due to the trends of rising contractor costs and increasing waitlist times for our clients, we looked to best practices in other jurisdictions for more efficient homeowner rehabilitation programs. Following the examples of neighboring jurisdictions such as Kent and King County, we shifted our program model to hire staff that could focus on doing repairs in-house. This will greatly reduce the proportion of repair jobs that have to be contracted out, increasing program efficiency and response times.

In comparing our Strategic Plan targets to our actuals over the past four years, it is clear that there have been some deviations as programs and community needs have changed. Our region has seen drastic increases in homelessness and housing cost-burdened households. Our targets for Non-Housing Community Development Public Services will remain below target for the remainder of this consolidated planning period. We had hoped to fund youth shelter activities with remaining public service dollars during this program year. Unfortunately, the agency that was awarded the contract ultimately decided that the CDBG reporting burden was too great for them to take on. As a result, we did not make progress on our Consolidated Plan shelter beds goal. However, Homelessness Prevention, Non Housing Public Service Activities, and Homeowner Housing Rehabilitation outcomes are far beyond our initial projections. The City's Public Service expenditures for 2019 include medical and dental services as well as employment training programs. Both programs are targeted towards Auburn's most vulnerable and at risk populations and are also seen as effective homeless intervention programs. Individuals benefitting from these programs are often able to overcome barriers to becoming self sufficient, establish stable employment and financial independence.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

White	150
Black or African American	26
Asian	13
American Indian or American Native	3
Native Hawaiian or Other Pacific Islander	33
Total	225
Hispanic	94
Not Hispanic	131

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

Auburn has a diverse community that continues to grow. The racial and ethnic groups listed in the graph do not accurately describe all groups present in Auburn as well as the ones served with CDBG funds. In addition, there are many individuals served that identify with more than one race and/or ethnicity.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	867,522	705,806
General Fund	public - local	490,000	483,915

Table 3 - Resources Made Available

Narrative

The City of Auburn expended all but \$106,534.15 of its 2019 allocation during the program year. The remainder, allocated to the City's Housing Repair program, has been obligated but not yet drawn due to contractor payment schedules and the aforementioned program transition to a partially in-house program model. The City has approximately \$51,182 in funds remaining from prior years that have been programmed into our 2020 Annual Action Plan. We expect those activities to be underway in late Spring or early Summer of 2020.

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description

Table 4 – Identify the geographic distribution and location of investments

Narrative

While the City of Auburn did not undertake any Target Area improvements during the 2019 program year, there were two LMI area benefit activities that were completed utilizing prior year allocated funds. The M Street sidewalk project installed approximately 363 square yards of sidewalk and 6 curb ramps to meet ADA requirements, improve accessibility in a low-mod area, and reduce architectural barriers. The K Street SE project built approximately 98 square yards of missing sidewalk on the west side of K Street SE in a low-mod area to improve ADA accessibility and remove barriers.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

Proposals to use CDBG funds with other leveraged funds can improve the feasibility of programs and projects since available funds are often insufficient to fully support most Community Development or Economic Development projects and programs. CDBG is generally used in conjunction with other grant funds to our local providers. Providers are encouraged to obtain private support in addition to CDBG funds in proposed activities. The City of Auburn made \$490,000 of General Funds available for competitive human services grants in 2019 for a range of services, including homelessness prevention and interventions, childcare access, legal assistance, youth programming, food access, health services, and more. The City of Auburn does not have matching requirements for 2019 projects and activities.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	0	0
Number of Special-Needs households to be provided affordable housing units	0	0
Total	0	0

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	0	0
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	45	59
Number of households supported through Acquisition of Existing Units	0	0
Total	45	59

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City's Annual Action Plan does not have any goals of providing housing, rental assistance, production of new units or acquisition of existing units. The City did exceed its goal of providing rehab to 45 low income homeowners residing in Auburn, reaching 59 households with minor housing repair services.

The program is the City's largest homeless prevention program which helps low income residents maintain their housing rather than be forced into homelessness due to not being able to afford the high

costs of home repair. Many program applicants are seniors, individuals with disabilities, or Veterans living on a fixed income. In addition to helping residents remain housed in safer and more accessible housing, the program also helps applicants connect to other supportive programs in the area.

Discuss how these outcomes will impact future annual action plans.

No future anticipated impacts at this time. However, the City will continue to explore new programs to benefit applicants of this project and to try to assist in all activity areas based on local needs and priorities.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	36	0
Low-income	23	0
Moderate-income	0	0
Total	59	0

Table 7 – Number of Households Served

Narrative Information

Consistent with the priorities and specific objectives outlined in the 2019 Annual Action Plan, the City allocates the largest share of its HUD funds to its homeowner housing rehabilitation program. As the city's largest homeless prevention program, the activity is consistent with the focus of the CDBG housing and homeless prevention programs. The program provides support to over 50 low income homeowners each year. The majority of program applicants are seniors, individuals with disabilities, or Veterans. For many residents, these repairs allow them to affordably stay in their homes and age in the community where they have established support systems. When setting the Housing Repair expected outcomes for the year, the City works to accurately estimate the number of households that can be served with allocated funds, given the scope of repairs provided by the program. Our new program model should allow us to serve a greater number of homeowners. This anticipated change is reflected in the target numbers submitted in the 2020-2024 Consolidated Plan.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City of Auburn does not receive ESG funds. The City is implementing several strategies on the local and regional level to address the issue of homelessness and funds several homeless prevention and intervention programs with its general funds.

Through its General Fund human services grants, the City funds PATH outreach to individuals experiencing homelessness in Auburn. Other programs funded to support this goal include homeless family diversion, sheltering programs that provide connections to CEA and case management, and homeless youth outreach and drop in programs.

In addition, the City of Auburn co-facilitates a monthly group with the Seattle-King County Coalition on Homelessness called the South King County Forum on Homelessness. This group brings together providers that serve folks experiencing homeless to support networking and coordination, skill building, and regular information sharing.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City of Auburn does not receive ESG funds for emergency shelter.

To address the emergency shelter and transitional housing needs of individuals experiencing homelessness, the City uses its general funds to support several transitional housing and emergency housing programs throughout the South King County region, including within the City of Auburn. Using general fund dollars, the City supports a motel voucher program for individuals and families fleeing domestic violence and in need of immediate shelter, a family shelter diversion program, two shelters in neighboring jurisdictions that serve Auburn residents, a Day Center and Overnight Shelter located within Auburn City limits for individuals experiencing homelessness, and drop in services for homeless youth. Additionally, the City owns two single family homes that it provides to local nonprofits to make available as transitional housing for formerly homeless families. Per our regional Coordinated Entry process, the city directs families to the coordinated family shelter entry system in King County.

Helping low-income individuals and families avoid becoming homeless, especially extremely

low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

The City of Auburn's homeless prevention programs include its housing repair program and its public service programs which are funded through CDBG. Public services include employment training and free medical and dental services. The housing repair program is the City's largest homeless prevention program which provides minor home repairs to low income residents in Auburn. The program makes it possible for low income residents to stay in their homes and avoid financial crisis from having to pay for costly home repairs that they normally would not be able to afford. The employment training program provides job coaching, career support, resume writing and emergency financial support to help Auburn residents secure and maintain employment which positively impacts financial independence and stable housing. The free medical and dental services give free access to healthcare to Auburn's low income or uninsured residents. Many residents currently experiencing or at risk of homelessness have a chronic or severe illness that is keeping them from participating in supportive services to gain self sufficiency. It also helps residents afford healthcare and avoid costly medical bills that can put them in a financial crisis.

In addition to programs supported by CDBG funds, the City of Auburn also supports homeless prevention programs using general fund dollars. These include robust employment training and pre-apprenticeship programs, eviction prevention programs that provide financial support and other household assistance, domestic violence advocacy and supports, legal assistance programs, and those supporting increased food security and access.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of Auburn does not receive ESG funds for programs to help homeless persons. The City of Auburn does invest a significant amount of its general funds to help individuals experiencing homelessness including adults, families, veterans and unaccompanied youth. Funded programs include: PATH, transitional housing, emergency shelters, family support programs, drop in centers, and behavioral health services.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

The City of Auburn does not currently own or operate any public housing. In Auburn, public housing is administered directly through the King County Housing Authority.

The City does advocate and support public housing in Auburn as well as helping residents understand the application process to gain access to it.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

Since the City does not administer public housing funds, or have any oversight over public housing tenants, it has no actions directed specifically to public housing residents.

The City does support its residents to become more involved and participate in homeownership. The City gathers information on agencies that provide first time homeowner workshops and communicates information on programs providing such support to residents seeking a pathway to homeownership, including those living in public housing.

Actions taken to provide assistance to troubled PHAs

Since the City does not administer public housing funds it does not evaluate the status or condition of public housing authorities.

The City's code enforcement officers have a good relationship with our public housing facilities and try to connect the residents and management with resources in supportive services as well as services the City provides.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

The City of Auburn adopted a Comprehensive Plan in 2015 that contained mandatory elements including housing. The housing element contains information about housing conditions and trends as well as information about the availability of sites and infrastructure to accommodate new housing needs and requires analysis of governmental constraints to the production and preservation of new housing. The city is required to have land-use plans and regulatory policies which facilitate the development of a range of housing types to meet the needs of all income groups. The housing element is developed with public input and participation. It serves as the basis for land-use and assistance programs to address local housing needs.

In 2019, Washington State made grant funding available to cities who are working on assessing their affordable housing inventory and developing strategies to meet those needs. The City of Auburn applied and was successful in receiving a \$100,000 planning grant. The City is part of a unique collaboration with the cities of Burien, Federal Way, Kent, Renton, and Tukwila who are pooling a portion of these grant funds in order to jointly fund a Sub-Regional Housing Needs Assessment.

In December of 2019, the Auburn City Council adopted two ordinances to support healthier rental housing in the community. Ordinance 6744 amended Chapter 15 of the Auburn City Code, adopting the National healthy Housing Standards as guidelines to assist code compliance officers promote healthy housing in Auburn. Ordinance 6755 supports the Healthy Housing Standards and requires mandatory inspections for multi-family properties with 3 or more confirmed code compliance violations in a 12 month period.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City continues to provide funds to address housing, infrastructure, homeless prevention, economic development and public facilities needs. In Auburn and the surrounding South King County area, these continue to be underserved needs so the City will explore ways to leverage additional resources towards addressing these.

The City continues to support partnerships with and amongst our providers, faith community and schools. City staff attend regular provider networking meetings, and are responsible for facilitating the South King County Forum on Homelessness. The city continues to make progress on the 46 recommendations provided by the Mayor's Task Force on Homelessness to move forward on addressing

our at risk and underserved populations.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

The City of Auburn includes language in its CDBG contracts that require agencies to comply with HUD Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4831, et seq.) requiring prohibition of the use of lead-based paint whenever CDBG funds are used. In addition, the City notifies residents of potential lead-based paint hazards when it awards a Housing Repair grant. A copy of the pamphlet – "Protect Your Family from Lead In Your Home" is provided to each Housing Repair client when the City conducts the initial inspection of their home.

The city takes additional measures when the age of the home indicates a possible presence of lead-based paint. Before housing repair work commences, the city contracts with a certified provider to undertake lead paint testing. When work is undertaken in homes with positively identified lead hazards, the city only contracts with RRP-certified contractors who will implement the necessary mitigation and safety strategies.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

In 2019, the City provided over \$200,000 in human services funds to programs that support poverty reduction strategies for low income Auburn residents. Programs include transitional housing, employment training, legal aid and emergency financial support. Most of these programs partner with other valuable programs in Auburn that address the needs of poverty level families. The City supports human service programs across a spectrum of services. These programs help meet community needs with behavioral health services, domestic violence services and early childhood services, among others. In 2019, the City of Auburn awarded \$490,000 to human service agencies through its competitive grant funding process.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The City of Auburn continues to participate actively in our region's Continuum of Care, and will remain involved in regional efforts to develop stronger institutional structure county-wide to prevent and end homelessness.

In 2019, the City formally signed on to an Interlocal Agreement with the municipalities of Burien, Covington, Des Moines, Federal Way, Kent, Normandy Park, Renton, Tukwila, and King County establishing the South King Housing and Homelessness Partners. The agreement allows for South King County jurisdictions to work together and share resources in order to effectively address affordable housing and homelessness. This collaborative model is based on similar approaches used in Snohomish

County, East King County, and other areas of the country. The purpose of the coalition is to increase the available options for South King County residents to access affordable housing and to preserve the existing affordable housing stock.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City of Auburn has heavily contributed and intends to continue cultivating relationships between public and private housing and social service agencies. In addition the City will continue to participate in collaborations with the South King County Forum on Homelessness, the South King County Council of Human Services, Seattle-King County Housing Development Consortium and the King County Joint Planners Meeting.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The City of Auburn continues to take actions to overcome identified impediments to fair housing based on King County's Analysis of Impediments to Fair Housing. Primarily the City continues to engage with regional partners to take local action and use the data provided as guidance to support local policies and make recommendations to our city councils.

In 2019, the City contracted with a consultant to conduct a Community Needs Assessment. The city also conducted public gatherings to receive input during the development of an updated Analysis of Impediments to Fair Housing Choice. Part of this assessment included qualitative data on impediments to fair housing choice. Data gathered from public input indicated the following:

- The lack of housing affordability, locally and regionally, is a key barrier for low- to moderate-income residents accessing safe and healthy housing in a community of choice.
- There is more education needed for both landlords and tenants on their rights and responsibilities.
- Many individuals in local shelters are housing ready and have rental resources available, but there are no housing units available for them to move into. This increases the strain on our homeless crisis response system.
- The lack of proactive enforcement and oversight of tenant protections translates to a lack of systemic accountability for tenant rights and rental housing quality in our community.
- The process for Fair Housing Enforcement is particularly challenging for vulnerable populations to access, due to fear of retaliation and an overly complex civil legal system.
- Low income renters in our community face particular challenges with absentee/out of state landlords in rental properties and mobile home parks.
- Credit scores and social security numbers are being used as neutral tools to discriminate against potential tenants.

- Tenants are experiencing barriers to accessing housing due to the changing technology used by landlords and property managers. A lack of access to technology for online applications presents soft barriers, while discrimination in the form of social media ad targeting can be a more concrete form of discrimination that bars access to rental information by certain populations.

In addition, the King County Consortium contracted with the Fair Housing Center of Washington in 2018 to gather quantitative and qualitative data on barriers to fair housing choice in our community to inform the Analysis of Impediments in our next Consolidated Plan. Nearly half of all tests conducted in King County, including those in Auburn, found evidence of housing discrimination. Though the Consolidated Plan update, the city will be adopting additional strategies to continue to improve access to fair housing in the community.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

Monitoring activities include onsite and desk monitoring through review of analysis and progress reports and invoice back up details, technical assistance calls and emails.

Subrecipients of City of Auburn CDBG funds are monitored annually. Notification and required materials for the monitoring are sent two weeks in advance of the monitoring date. A detailed monitoring tool is used to assess the program's progress, timeliness and adherence to HUD guidelines. After each annual monitoring a formal letter is sent to the subrecipient detailing the findings or concerns of their monitoring. Each subrecipient is given 30 days to respond to the letter.

The City monitors agency compliance with its CDBG contract by requiring the agency to submit quarterly reports that include data on the number of service units provided along with demographic information about their clients. Quarterly reports are cross referenced to the requirements in their contract to ensure the subrecipient is on track to complete contract goals.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

The City's Citizen Participation Plan, available on the City's website as well as in paper copy upon request, lays out the timelines and opportunities for public comment on all aspects of CDBG planning and reporting.

The City provides adequate notice at the opening of the 15 day comment period on the CAPER. The notice is provided by wide distribution utilizing the city's vehicles of communication, including posting in

the City's paper of record, the Seattle Times. The draft CAPER is also made available on the City's website for electronic access and review.

The City accepts public comments in any form convenient to the public, including written responses, facsimile and email. The City considers all comments and views received in writing or orally at in preparing the CAPER.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City has not experienced any significant changes in its program objectives.

The City continues to improve processes and procedures to bring the program into alignment with its current objectives. The City will maintain focus on preserving and providing affordable housing, addressing homelessness, and public services.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

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[BEDI grantees] Describe accomplishments and program outcomes during the last year.



Office of Community Planning and Development
U.S. Department of Housing and Urban Development
Integrated Disbursement and Information System
PR26 - CDBG Financial Summary Report
Program Year 2019
AUBURN , WA

DATE: 03-23-20
TIME: 11:10
PAGE: 1

PART I: SUMMARY OF CDBG RESOURCES

01 UNEXPENDED CDBG FUNDS AT END OF PREVIOUS PROGRAM YEAR	271,780.18
02 ENTITLEMENT GRANT	595,742.00
03 SURPLUS URBAN RENEWAL	0.00
04 SECTION 108 GUARANTEED LOAN FUNDS	0.00
05 CURRENT YEAR PROGRAM INCOME	0.00
05a CURRENT YEAR SECTION 108 PROGRAM INCOME (FOR SI TYPE)	0.00
06 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
06a FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
07 ADJUSTMENT TO COMPUTE TOTAL AVAILABLE	0.00
08 TOTAL AVAILABLE (SUM, LINES 01-07)	867,522.18

PART II: SUMMARY OF CDBG EXPENDITURES

09 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	503,351.25
10 ADJUSTMENT TO COMPUTE TOTAL AMOUNT SUBJECT TO LOW/MOD BENEFIT	0.00
11 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 09 + LINE 10)	503,351.25
12 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	96,978.81
13 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	0.00
14 ADJUSTMENT TO COMPUTE TOTAL EXPENDITURES	105,475.86
15 TOTAL EXPENDITURES (SUM, LINES 11-14)	705,805.92
16 UNEXPENDED BALANCE (LINE 08 - LINE 15)	161,716.26

PART III: LOWMOD BENEFIT THIS REPORTING PERIOD

17 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
18 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
19 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	503,351.25
20 ADJUSTMENT TO COMPUTE TOTAL LOW/MOD CREDIT	0.00
21 TOTAL LOW/MOD CREDIT (SUM, LINES 17-20)	503,351.25
22 PERCENT LOW/MOD CREDIT (LINE 21/LINE 11)	100.00%

LOW/MOD BENEFIT FOR MULTI-YEAR CERTIFICATIONS

23 PROGRAM YEARS(PY) COVERED IN CERTIFICATION	PY: PY: PY:
24 CUMULATIVE NET EXPENDITURES SUBJECT TO LOW/MOD BENEFIT CALCULATION	0.00
25 CUMULATIVE EXPENDITURES BENEFITING LOW/MOD PERSONS	0.00
26 PERCENT BENEFIT TO LOW/MOD PERSONS (LINE 25/LINE 24)	0.00%

PART IV: PUBLIC SERVICE (PS) CAP CALCULATIONS

27 DISBURSED IN IDIS FOR PUBLIC SERVICES	0.00
28 PS UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
29 PS UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
30 ADJUSTMENT TO COMPUTE TOTAL PS OBLIGATIONS	81,417.56
31 TOTAL PS OBLIGATIONS (LINE 27 + LINE 28 - LINE 29 + LINE 30)	81,417.56
32 ENTITLEMENT GRANT	595,742.00
33 PRIOR YEAR PROGRAM INCOME	0.00
34 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PS CAP	0.00
35 TOTAL SUBJECT TO PS CAP (SUM, LINES 32-34)	595,742.00
36 PERCENT FUNDS OBLIGATED FOR PS ACTIVITIES (LINE 31/LINE 35)	13.67%

PART V: PLANNING AND ADMINISTRATION (PA) CAP

37 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	96,978.81
38 PA UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
39 PA UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
40 ADJUSTMENT TO COMPUTE TOTAL PA OBLIGATIONS	0.00
41 TOTAL PA OBLIGATIONS (LINE 37 + LINE 38 - LINE 39 +LINE 40)	96,978.81
42 ENTITLEMENT GRANT	595,742.00
43 CURRENT YEAR PROGRAM INCOME	0.00
44 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PA CAP	0.00
45 TOTAL SUBJECT TO PA CAP (SUM, LINES 42-44)	595,742.00
46 PERCENT FUNDS OBLIGATED FOR PA ACTIVITIES (LINE 41/LINE 45)	16.28%



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LINE 17 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 17

Report returned no data.

LINE 18 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 18

Report returned no data.

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

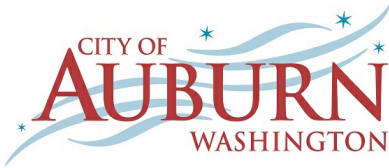
Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2017	9	247	6288252	10th Street Sidewalk Improvement	03L	LMC	\$1,425.00
2017	9	247	6296628	10th Street Sidewalk Improvement	03L	LMC	\$73.81
2017	9	247	6310350	10th Street Sidewalk Improvement	03L	LMC	\$1,904.00
2017	9	247	6315905	10th Street Sidewalk Improvement	03L	LMC	\$47,346.49
2017	9	247	6321789	10th Street Sidewalk Improvement	03L	LMC	\$2,932.71
2017	10	248	6288252	K Street SE Sidewalk Project	03L	LMA	\$8,491.95
2017	10	248	6296628	K Street SE Sidewalk Project	03L	LMA	\$13,833.71
2017	10	248	6315905	K Street SE Sidewalk Project	03L	LMA	\$1,141.88
2017	10	248	6321789	K Street SE Sidewalk Project	03L	LMA	\$170.93
2017	11	249	6288252	M Street SE Sidewalk Project	03L	LMA	\$58,791.22
2017	11	249	6296628	M Street SE Sidewalk Project	03L	LMA	\$3,213.78
2017	11	249	6321789	M Street SE Sidewalk Project	03L	LMA	\$7,542.24
					03L	Matrix Code	\$146,867.72
2018	2	253	6282620	housing repair	14A	LMH	\$49,257.08
2018	2	253	6288252	housing repair	14A	LMH	\$10,931.80
2018	2	253	6308500	housing repair	14A	LMH	\$9,541.47
2019	1	254	6288252	Housing Repair	14A	LMH	\$99,985.15
2019	1	254	6296628	Housing Repair	14A	LMH	\$12,590.53
2019	1	254	6308500	Housing Repair	14A	LMH	\$13,006.72
2019	1	254	6315905	Housing Repair	14A	LMH	\$50,359.90
2019	1	254	6322104	Housing Repair	14A	LMH	\$70,443.76
2019	1	254	6332354	Housing Repair	14A	LMH	\$40,354.77
2019	1	254	6332649	Housing Repair	14A	LMH	\$12.35
Total					14A	Matrix Code	\$356,483.53
							\$503,351.25

LINE 27 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 27

Report returned no data.

LINE 37 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 37

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2019	2	255	6288252	Administration	21A		\$41,052.63
2019	2	255	6296628	Administration	21A		\$11,421.99
2019	2	255	6308500	Administration	21A		\$19,775.26
2019	2	255	6315905	Administration	21A		\$13,900.49
2019	2	255	6322104	Administration	21A		\$10,828.44
					21A	Matrix Code	\$96,978.81
Total							\$96,978.81



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6780 (Tate) (20 Minutes)

Date:

July 7, 2020

Department:

Community Development

Attachments:

[Ordinance No. 6780 Ch 5.24 ACC Residential
Rental Just Cause.](#)

Budget Impact:

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

Administrative Recommendation:

Schedule Ordinance 6780 for City Council action on July 20, 2020

Background Summary:

A Just Cause Eviction Ordinance (JCEO) protects tenants from being forced to leave their rental home without reasonable justification. Washington state law prohibits unfair, retaliatory evictions, a critical tenant protection (RCW 59.18.240; RCW 59.18.250). However, locally enforced JCEOs clearly enumerate the grounds on which landlords can end a tenancy. Any evictions or terminations of tenancy outside those specified by the ordinance are considered illegal once the JCEO is in effect.

City staff presented an overview of JCEO concepts during study session discussions on July 18, 2018 and April 22, 2019 as part of larger presentations related to various tenant protection programs in place throughout the region. Staff provided materials that the City of Seattle had assembled outlining their JCEO. A number of other cities in Washington State also have adopted a JCEO (including Burien and Federal Way). After researching multiple JCEO examples and interviewing staff from other municipalities, Burien was selected as a template for the creation of a draft JCEO for consideration by Auburn City Council.

There are a number of reasons for the preparation of the JCEO for Council consideration at this time:

1. Council previously expressed interest in adopting a JCEO in Auburn.
2. It is a policy action that is consistent with the recommendations contained in the Regional Affordable Housing Task Force 5 Year Action Plan.
3. It is a policy action that is consistent with the Joint Recommendations Committee for the 2020 State Legislative Agenda (of which Auburn is a member).
4. It is a policy action that is consistent with the South King Housing and Homelessness Partners (SKHHP).
5. The high degree of concern that the recent spike in high unemployment rates due to COVID 19 and its associated economic impact.

6. The concern that the Governor's temporary moratorium on residential tenant evictions will expire on August 1, 2020.

In addition to establishing codified reasons for why a landlord may evict a tenant a JCEO also establishes local requirements for the notification timeframes that a landlord must abide by when increasing rental rates. Under Washington State law, a landlord is required to provide a minimum of 60 days notice that rental rates are increasing, irrespective of how much the landlord intends to increase rent. A JCEO can establish longer notification timeframes for more significant rent increases by establishing a percentage increase threshold and a longer timeframe. In the draft ordinance attached as Exhibit A, staff is proposing to establish a 120 day notification requirement when the rent will increase by more than 5%. Both the percent threshold and the number of days are highlighted below as one of the policy questions for City Council to consider. The reason that it is important to provide more notification for larger increases in rent is because the tenant may not be able to afford the increase which means they will need to find a new housing option. And finding a new housing option will require the tenant to secure funds associated with the cost of moving, security deposit for the new home, and first and last month's rent. When combined with the potential other costs associated with setting up new utility accounts, changing school districts, finding new child care, etc. it is difficult for the tenant to be prepared to move to a new home with a 60 day notification.

Another advantage of a JCEO is that it allows a City to assist tenants and landlords in areas the City currently has no authority. While the landlord tenant laws are well established and are intended to protect both parties, the City does not have authority to enforce these laws. Enforcement is remedied through the courts. A JCEO provides the City with a tool to assist in some areas of landlord tenant relations.

POLICY QUESTIONS:

1. General: Does City Council generally support inclusion of a JCEO in Auburn City Code?
2. ACC 5.24.040.A.1: The draft document establishes a threshold and timeframe requirement that warrants further discussion:
 - a. First, a 5% threshold is established. Rent increases of 5% or less require the standard 60 day notification established in Washington State law. Increases that are greater than 5% require more than 60 days notification. Jurisdictions that have a JCEO have different thresholds that range from 3% to 7%. Staff included 5% because it is the midpoint. Does City Council concur or should there be a different threshold? For additional perspective, here are some figures that help provide real dollars to the percentage options (using July 2019 median rental rate of \$1,732 per month):
 - i. 3% increase = \$50 per month
 - ii. 5% increase = \$85 per month
 - iii. 7% increase = \$120 per month

- b. Second, a 120 day notification is established. Where rent increases are greater than 5% the landlord would have to provide a 120 day notice to the tenant. Similar to the percentage threshold, other JCEO's range from 90 days to 180 days. Staff selected 120 days because it is within the middle of the range. Does City Council concur with 120 days or should it be modified to 90 or 180 days?
- 3. ACC 5.24.045: Does City Council support the inclusion of the temporary COVID 19 related provisions included in section ACC 5.24.045 which establishes temporary, modified enforcement restrictions? This is a unique provision that is not contained in other JCEO's but is timely due to the August 1, 2020 expiration of the Governor's current order that prohibits certain types of residential evictions and lays the foundation for rental repayment plans for tenants that have lost income as a result of COVID 19 related matters.

Reviewed by Council Committees:

Councilmember: Trout-Manuel
Meeting Date: July 13, 2020

Staff: Tate
Item Number:

ORDINANCE NO. 6 7 8 0

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, CREATING A NEW CHAPTER
5.24 OF THE CITY CODE REGARDING A CITY OF AUBURN
RENTAL HOUSING POLICY**

WHEREAS, earlier this year, the World Health Organization has announced novel coronavirus (COVID-19) is officially a global pandemic; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency because of COVID-19; and

WHEREAS, the Washington Governor also declared a State of Emergency due to new cases of COVID-19; and

WHEREAS, on March 5, 2020, the Mayor proclaimed a local emergency due to growing public health impacts of COVID-19, which the Auburn City Council ratified by Resolution No. 5504; and

WHEREAS, in addition to the COVID-19 challenges that can affect payment of residential rent, it is appropriate to establish regulations supporting the issues of increasing housing security and enforcement mechanisms as they relate to rental housing within the City limits of Auburn; and

WHEREAS, it is the City's intent to continue its commitment to maintain vibrant and diverse neighborhoods within Auburn, while balancing the needs of landlord and tenants.

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

Section 1. New Chapter 5.24 to City Code. A new Chapter 5.24 of the Auburn

City Code is hereby created to read as follows:

Chapter 5.24
Rental Housing Policy

Sections:

- 5.24.010 Purpose and Intent.
- 5.24.020 Definitions.
- 5.24.030 Distribution of information required.
- 5.24.040 Deposit requirements, notice of rent increase requirements, and installment payments permitted.
- 5.24.050 Notice requirement generally-reasonable accommodation request.
- 5.24.060 Notice of proposed sale of low-income housing.
- 5.24.070 Just Cause Eviction
- 5.24.080 Compliance and enforcement.

5.24.010 Purpose and Intent.

The purpose of this chapter is to establish regulations supporting the topic of increasing housing security, and to establish standards and enforcement mechanisms as they relate to rental housing within the City limits of Auburn. It is the City's intent to continue its long-term commitment to maintain vibrant and diverse neighborhoods within Auburn. The regulations contained in this chapter balance the needs of the landlord, tenant, and the City while creating a partnership to ensure safe, healthy, and thriving rental housing in Auburn. The City recognizes that the renting of residential property is a commercial venture where owners and landlords must evaluate risk, profit, and loss. Providing housing for Auburn residents directly impacts quality of life at the most basic level, and therefore requires regulations to ensure that it is equitably undertaken. This chapter strives to ensure housing security for current and future residents, and addresses potential retaliation against tenants who make complaints about housing conditions.

5.24.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- A. "Assisted housing development" means a multifamily rental housing development that both receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.
- B. "Days" means calendar days unless otherwise provided.
- D. "Director" means the Director of the City of Auburn Department of Community Development, or the Director's designee.
- E. "Dwelling unit" means a structure or part of a structure used as a home, residence, or sleeping place by one, two, or more persons maintaining a

common household, including, but not limited to, single-family residences and multiplexes, apartment buildings, and mobile homes.

E. "Immediate family member" includes the spouse or domestic partner, dependent children, and other dependent relatives.

F. "Landlord" means a landlord as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act of 1973 ("RLTA") in effect at the time the rental agreement is executed. As of the effective day of this ordinance, the RLTA defines "landlord" as "the owner, lessor, or sub-lessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sub-lessor including, but not limited to, an agent, a resident manager, or a designated property manager."

G. "Non-refundable move-in fees" means non-refundable payment paid by a tenant to a landlord to cover administrative, pet, or damage fees, or to pay for cleaning of the dwelling unit upon termination of the tenancy, but does not include payment of a holding fee authorized by RCW 59.18.253(2).

H. "Owner" means "Owner" means the owner of record as shown on the last King County tax assessment roll or such owner's authorized agent.

1. "Rent" or "rental amount" means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities. These terms do not include nonrecurring charges for costs incurred due to late payment, damages, deposits, legal costs, or other fees, including attorneys' fees. PROVIDED, however, that if, at the commencement of the tenancy, the landlord has provided an installment payment plan for nonrefundable fees or deposits for the security of the tenant's obligations and the tenant defaults in payment, the landlord may treat the default payment as rent owing.

J. "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit."

K. "Security deposit" means a refundable payment or deposit of money, however designated, the primary function of which is to secure performance of a rental agreement or any part of a rental agreement. "Security deposit" does not include a fee.

L. "Substantial rehabilitation" means extensive structural repair or extensive remodeling and requires a building, electrical, plumbing, or mechanical permit for the tenant's dwelling unit at issue. Any "substantial rehabilitation" as provided herein requires displacement of a tenant.

M. "Tenant" means any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

5.24.030 Distribution of information required.

A. Distribution of resources by landlord.

1. At the time a prospective tenant applies to reside in a dwelling unit, the landlord shall provide the prospective tenant with the landlord's written rental

criteria and, once created by the City, with a City of Auburn informational website address designated by the City for the purpose of providing information about the property and its landlord, which may include, but is not limited to, local code enforcement information relating to properties within City limits, and a website address for the Washington Secretary of State for the purpose of providing information on how to register to vote or change their address, if the individual is already registered to vote.

2. In the event a prospective tenant cannot reasonably access the internet and at their request, a landlord shall provide the prospective tenant a paper copy of the property and landlord information that can be found on the website identified above.

B. Distribution of information packets by landlord.

1. The Director shall prepare and update as necessary, summaries of this chapter, the Auburn Building and Property Maintenance Code (ACC 15.20), state RLTA (RCW 59.18), Forcible Entry and Forcible and Unlawful Detainer (RCW 59.12), and Fair Housing laws, describing the respective rights, obligations, and remedies of landlords and tenants, including information about legal resources available to tenants.

2. A landlord shall provide a copy of the summaries prepared by the Director to any tenant or prospective tenant when a rental agreement is offered, whether or not the agreement is for a new or renewal agreement.

3. Where there is an oral rental agreement, the landlord shall give the tenant copies of the summaries described herein, either before entering into the oral rental agreement or as soon as reasonably possible after entering into the oral rental agreement.

4. For existing tenants, landlords shall, within 30 days after the summaries are made available by the City, distribute current copies of the summaries to existing tenants.

5. The initial distribution of information to tenants must be in written form and landlords shall obtain the tenant's signature documenting tenant's receipt of such information. If a tenant refuses to provide a signature documenting the tenant's receipt of the information, the landlord may draft a declaration stating when and where the landlord provided tenant with the required information. After the initial distribution of the summaries to tenants, a landlord shall provide existing tenants with updated summaries by the City, and may do so in electronic form unless a tenant otherwise requests written summaries.

6. The packet prepared by the Director includes informational documents only, and nothing in the summaries therein shall be construed as binding on or affecting any judicial determination of the rights and responsibilities of landlords and tenants, nor is the Director liable for any misstatement or misinterpretation of the applicable laws.

C. Notice of resources. A landlord is required to provide a copy of resource summary, prepared by the City, to any tenant when the landlord provides a notice to a tenant under RCW 59.12.030.

5.24.040 Deposit requirements, notice of rent increase requirements and installment payments permitted.

A. A landlord may not increase the rent or charge any non-rent charges except in accordance with this section, unless such increase or charge has been agreed to in writing signed by landlord and tenant at the time of entering into the initial lease or rental agreement:

1. A landlord may not increase the rent of a tenant by more than five percent (5%) of the rent unless the landlord has provided the tenant with notice of the rent increase at least one hundred twenty (120) days before such increase shall take effect. Any rental increase of five percent (5%) or less may be served in accordance with state or other applicable law.

(a) In the event of an increase of more than five percent (5%) of the rent, the tenant may terminate the tenancy immediately upon surrendering the dwelling unit at any point prior to the increase taking effect. The tenant shall only owe pro rata rent through the date upon which the premises are surrendered. Any notice increasing the rent above five percent (5%) of the current rent shall inform the tenant that they may terminate the tenancy at any time and owe pro rata rent through the date the tenant surrenders the dwelling unit.

(b) Any notice of a rent increase shall be served in accordance with RCW 59.12.040.

2. Any amount paid to the landlord by the tenant at the commencement of the tenancy charged for the purpose of procuring and obtaining a dwelling unit, including the deposit or as security for performance of the tenant's obligations in a lease or rental agreement, must not exceed the allowable monthly rent as permitted by this chapter; Any landlord under this section must offer to the tenant prior to entering into the rental agreement the opportunity to pay amounts as deposit or security for performance over six months upon moving into the unit.

3. Any fees for late payment of rent shall not exceed ten dollars (\$10.00) per month. No other fees may be charged for late payment of rent, including for the service of any notice required under state law, or any legal costs, including court costs and attorney's fees, unless such fee is agreed to in writing signed by landlord and tenant at the time of entering into the initial lease or rental agreement.

4. No other fees may be charged in connection with the lease or rental agreement unless such fee is agreed to in writing signed by landlord and tenant at the time of entering into the initial lease or rental agreement, Provided that the landlord may recoup from the tenant actual costs incurred by the landlord and caused by or attributable to the tenant if consistent with written the lease or rental agreement.

B. Installment payments, generally. Upon a tenant's written request, tenants may pay security deposits, non-refundable move-in fees, and/or last month's rent in installments as provided herein; except that the tenant cannot elect to pay the security deposit and non-refundable move-in fees in installments if (1) the total amount of the security deposit and nonrefundable move-in fees does not exceed 25 percent of the first full month's rent for the tenant's dwelling unit; and

(2) payment of last month's rent is not required at the inception of the tenancy. Landlords may not impose any fee, charge any interest, or otherwise impose a cost on a tenant because a tenant elects to pay in installments. Installment payments are due at the same time as rent is due. All installment schedules must be in writing, signed by both parties.

B. Fixed-term tenancies for three months or longer. For any rental agreement term that establishes a tenancy for three months or longer, the tenant may elect to pay the security deposit, non-refundable move-in fees, and last month's rent, excluding any payment made by a tenant to the landlord prior to the inception of tenancy to reimburse the landlord for the cost of obtaining a tenant screening report, in three consecutive, equal monthly installments that begin at the inception of the tenancy.

C. Month-to-month or two-month tenancy. For any rental agreement term that establishes a tenancy from month-to-month or two months, the tenant may elect to pay the security deposit, non-refundable move-in fees, and last month's rent, excluding any payment made by a tenant to the landlord prior to the inception of tenancy to reimburse the landlord for the cost of obtaining a tenant screening report, in two equal installments. The first payment is due at the inception of the tenancy, and the second payment is due on the first day of the second month or period of the tenancy.

D. A tenant's failure to pay a security deposit, non-refundable move-in fees, and last month's rent according to an agreed payment schedule is a breach of the rental agreement and subjects the tenant to a fourteen-day notice pursuant to RCW 59.12.030(4), and shall mean that the entire amount of any outstanding payments shall become due when the next rent payment is due, unless otherwise agreed to in writing by the landlord and tenant.

E. Paying in installments does not apply to a landlord obtaining a tenant screening report, which report cost paid by the tenant shall be limited to the standard and actual cost of the tenant screening report.

F. No security deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the beginning of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement.

G. A landlord must place any required security deposit in a trust account and provide a written receipt and notice of the name, address, and location of the depository and any subsequent change thereof to the tenant, in compliance with the requirements of RCW 59.18.270.

H. Nothing in this Chapter 5.24 prohibits a landlord from bringing an action against a tenant to recover sums exceeding the amount of the tenant's security deposit for damage to the dwelling unit for which the tenant is responsible.

The landlord may seek attorney's fees for such an action as authorized by chapter 59.18 RCW.

5.24.045 Temporary COVID-19 Rental Enforcement Restrictions.

A. During the term of the Emergency Proclamations issued by Washington State Governor Jay Inslee related to the COVID-19 Pandemic, including the Governor's Proclamation 20-05, and any amendments and extensions thereto, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and where it occurred on or after February 29, 2020, the date when the initial State of Emergency was proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident. The enforcement restrictions set forth herein shall only apply to rental payment amounts during the time the Governor's Emergency Proclamation 20-05, and any amendments and extensions thereto are in effect.

B. This Section 5.24.045 of the City Code shall automatically expire and shall be repealed without any other action by the City Council at such time as there are no remaining payments due and/or enforcement actions that could be brought hereunder, or one year after the effective date of this Ordinance, whichever comes first.

5.24.050 Notice requirement generally - reasonable accommodation request.

A landlord shall review and comply with all reasonable accommodation requests received from a tenant related to the service of any notice required by this chapter.

5.24.060 Notice of proposed sale of low-income housing.

Owners of a multifamily rental housing building having five or more housing units, any one of which rents for an amount that is affordable to households at or below 80 percent of area median income, as median income was most recently determined by the United States Department of Housing and Urban Development, shall notify the Director of the owner's intent to sell the building. The notice shall be in writing and include the owner's name, phone number, and the address of the rental housing building that will be listed for sale. The notice shall be mailed no later than 60 days prior to the building being listed with any real estate service or advertised for sale either in a printed newspaper or website. For the purposes of this subsection, a building is "listed" when an owner has signed a listing agreement

with a real estate agent. Owners of multifamily buildings having five or more housing units who are otherwise required by law or agreement to notify the Director of the owner's intent to sell or transfer the building and who have provided such notice are exempt from the notice requirement of this subsection.

5.24.070 Just Cause Eviction

A. Pursuant to provisions of the Washington State Residential Landlord-Tenant Act (RCW 59.18.290), owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380). Owners of housing units shall not evict or attempt to evict any tenant, or otherwise terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause exists. Owners may not evict residential tenants from rental housing units if the units are not licensed with the City of Auburn as required by ACC Chapter 5.62, regardless of whether just cause for eviction may exist. An owner is in compliance with licensing requirement if the rental housing unit is licensed with the City of Auburn pursuant to ACC Chapter 5.62 before entry of a court order authorizing eviction or before a writ of restitution is granted. A court may grant a continuance in an eviction action in order to give the owner time to license the rental housing unit. The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this Section ACC 5.24.070:

1. The tenant fails to comply with a fourteen-day notice to pay rent or vacate pursuant to RCW 59.12.030(3); a ten day notice to comply or vacate pursuant to RCW 59.12.030(4); or a three day notice to vacate for waste, nuisance (including a drug-related activity nuisance pursuant to chapter RCW 7.43), or maintenance of an unlawful business or conduct pursuant to RCW 59.12.030(5);

2. The tenant habitually fails to pay rent when due which causes the owner to notify the tenant in writing of late rent four or more times in a 12-month period;

3. The tenant fails to comply with a ten-day notice to comply or vacate that requires compliance with a material term of the rental agreement or that requires compliance with a material obligation under chapter 59.18.130 RCW;

4. The tenant habitually fails to comply with the material terms of the rental agreement which causes the owner to serve a ten-day notice to comply or vacate three or more times in a 12-month period;

5. The owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence and no substantially equivalent unit is vacant and available in the same building, and the owner has given the tenant at least 90 days' advance written notice of the date the tenant's possession is to end. The Director may reduce the time required to give notice to no less than 60 days if the Director determines that delaying occupancy will result in a personal hardship to the owner or to the owner's immediate family. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. There is a

rebuttable presumption of a violation of this subsection 5.24.070(A)(5) if the owner or a member of the owner's immediate family fails to occupy the unit as that person's principal residence for at least 60 consecutive days during the 90 days immediately after the tenant vacated the unit pursuant to a notice of termination or eviction using this subparagraph as the cause for eviction;

6. The owner elects to sell a dwelling unit subject to the provisions of this Chapter and gives the tenant at least 90 days' written notice prior to the date set for vacating, which date shall coincide with the end of the term of a rental agreement, or if the agreement is month to month, with the last day of a monthly period. The Director may reduce the time required to give notice to no less than 60 days if the Director determines that providing 90 days' notice will result in a personal hardship to the owner. Personal hardship may include but is not limited to hardship caused by illness or accident, unemployment, or job relocation. For the purposes of this subsection, an owner "elects to sell" when the owner makes reasonable attempts to sell the dwelling within 30 days after the tenant has vacated, including, at a minimum, listing it for sale at a reasonable price with a realty agency or advertising it for sale at a reasonable price in a newspaper of general circulation. There shall be a rebuttable presumption that the owner did not intend to sell the unit if:

(a) Within 30 days after the tenant has vacated, the owner does not list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise it for sale at a reasonable price in a newspaper of general circulation, or

(b) Within 90 days after the date the tenant vacated or the date the property was listed for sale, whichever is later, the owner withdraws the rental unit from the market, rents the unit to someone other than the former tenant, or otherwise indicates that the owner does not intend to sell the unit;

7. The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated;

8. The owner seeks to do substantial rehabilitation in the building and gives the tenant at least 120 days' written notice prior to the date set for vacating. To utilize this basis as the rationale for termination, the owner must obtain at least one permit necessary for the rehabilitation before terminating the tenancy;

9. The owner elects to demolish the building, convert it to a cooperative, or convert it to a nonresidential use and gives the tenant at least 120 days' written notice prior to the date set for vacating. To utilize this basis as the rationale for termination, the owner must obtain a permit necessary to demolish or change the use before terminating any tenancy or converts the building to a condominium;

10. The owner seeks to discontinue use of a housing unit unauthorized by ACC 18 after receipt of a notice of violation;

11. The owner seeks to reduce the number of individuals residing in a dwelling unit to comply with the maximum limit of individuals allowed to occupy one dwelling unit as required by ACC Titles 15 and 18, and

(a)(1) The number of such individuals was more than is lawful under the current version of ACC Title 15 or Title 18; and

(2) That number has not increased with the knowledge or consent of the owner; and

(3) The owner is either unwilling or unable to obtain a permit to allow the unit with that number of residents and

(b) The owner has served the tenants with a 30-day notice, informing the tenants that the number of tenants exceeds the legal limit and must be reduced to the legal limit; and

(c) After expiration of the 30-day notice, the owner has served the tenants with and the tenants have failed to comply with a ten-day notice to comply with the limit on the number of occupants or vacate, and

(d) If there is more than one rental agreement for the unit, the owner may choose which agreements to terminate; provided that, the owner may either terminate no more than the minimum number of rental agreements necessary to comply with the legal limit on the number of occupants, or, at the owner's option, terminate only those agreements involving the minimum number of occupants necessary to comply with the legal limit;

12. An emergency order requiring that the housing unit be vacated and closed has been issued pursuant to ACC 15 and the emergency conditions identified in the order have not been corrected;

13. The owner seeks to discontinue sharing with a tenant of the owner's own housing unit, *i.e.*, the unit in which the owner resides, seeks to terminate the tenancy of a tenant of an accessory dwelling unit that is accessory to the housing unit in which the owner resides, or seeks to terminate the tenancy of a tenant in a single-family dwelling unit and the owner resides in an accessory dwelling unit on the same lot. This subsection does not apply if the owner has received a notice of violation of the development standards of ACC Title 19;

14. A tenant, or with the consent of the tenant, the tenant's subtenant, sublessee, resident, or guest, has engaged in criminal activity on the premises, or on the property or public right-of-way abutting the premises, and the owner has specified in the notice of termination the crime alleged to have been committed and the general facts supporting the allegation, and has assured that the Department has recorded receipt of a copy of the notice of termination. For purposes of this subsection a person has "engaged in criminal activity" if he or she:

a. Engages in drug-related activity that would constitute a violation of chapters 69.41, 69.50, or 69.52 RCW, or

b. Engages in activity that is a crime under the laws of this state, but only if the activity substantially affects the health or safety of other tenants or the owner.

B. Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this Subsection 5.24.070 shall be deemed void and of no lawful force or effect.

C. With any termination notices required by law, owners terminating any tenancy protected by this section shall advise the affected tenant or tenants in writing of the reasons for the termination and the facts in support of those reasons;

D. If a tenant who has received a notice of termination of tenancy claiming subsection 5.24.070(A)(5), 5.24.070(A)(6) or 5.24.070(A)(13) as the ground for termination believes that the owner does not intend to carry out the stated reason for eviction and makes a complaint to the Director, then the owner must, within ten days of being notified by the Director of the complaint, complete and file with the Director a certification stating the owner's intent to carry out the stated reason for the eviction. The failure of the owner to complete and file such a certification after a complaint by the tenant shall be a defense for the tenant in an eviction action based on this ground.

E. In any action commenced to evict or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this section.

F. It shall be a violation of this section for any owner to evict or attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any tenant using a notice which references subsections 5.24.070(A)(5), 5.24.070(A)(6), 5.24.070(A)(8), 5.24.070(A)(11), 5.24.070(A)(12) or 5.24.070(A)(13) as grounds for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy.

G. An owner who evicts or attempts to evict a tenant or who terminates or attempts to terminate the tenancy of a tenant using a notice which references subsections 5.24.070(A)(5), 5.24.070(A)(6) 5.24.070 (A)(8) as the ground for eviction or termination of tenancy without fulfilling or carrying out the stated reason for or condition justifying the termination of such tenancy shall be liable to such tenant in a private right for action for damages up to \$2,000, costs of suit, or arbitration and reasonable attorney's fees.

5.24.080 Compliance and enforcement.

A. Powers and duties of the Director.

1. The Director is authorized to enforce this chapter and may promulgate rules and regulations consistent with this chapter.

2. The Director shall attempt to settle by agreement any alleged violation or failures to comply with the provisions of this chapter; provided that nothing herein shall create a right or entitlement of a landlord to settlement by agreement.

3. The Director is authorized to request records from landlord and the landlord shall allow the Director access to such records, as well as a complete roster of tenants' names and contact information, when requested, with at least five business days' notice and at a mutually agreeable time, to investigate potential violations of the requirements of this chapter.

B. Violation.

1. If a violation of this chapter occurs, the Director shall utilize the procedures outlined in Chapter 5.15 ACC.

2. The Director may waive or reduce the penalty if the landlord comes into compliance within ten days of the Notice of Violation or shows that its failure

to comply was due to reasonable cause and not willful neglect. If the Director finds a willful violation of this chapter, which resulted in a Notice of Violation outlined above, the Director may issue a Penalty that shall be \$1,000.

3. Any civil penalties paid by the landlord shall be kept by the City and may be utilized to help offset payments that are due by the tenant.

4. Any tenant claiming injury from any violation of this chapter shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this chapter, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including declaratory or injunctive relief. A tenant who prevails in any action to enforce this chapter shall be awarded his or her costs, reasonable attorneys' fees, and expenses.

a. A landlord who violates this chapter shall be liable for penalties of up to two times the monthly rent of the dwelling unit at issue.

b. Failure of a landlord to comply with any of the provisions of this chapter shall provide the tenant with a defense in any legal action brought by the landlord to recover possession of the dwelling unit.

D. Administrative Review by the Director

1. General. A person to whom a Notice of Violation or penalty is assessed may request an administrative review of the Notice of Violation or penalty.

2. How to request administrative review. A person may request an administrative review of the Notice of Violation or penalty by filing a written request with the Director within ten-days from the date the Notice of Violation or penalty was issued. The request shall state, in writing, the reasons the Director should review the Notice of Violation or penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Director shall review the information provided. The City has the burden to prove a violation exists by a preponderance of the evidence.

3. Decision of Director. After considering all of the information provided, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Notice of Violation or penalty. The Director's decision shall be delivered, in writing, to the person to whom the notice of violation was issued by personal delivery or first-class mail.

E. Appeals to the Hearing Examiner of Director's Decision. Appeal of the Director's decision shall be made within ten days from the date of the Director's decision by filing a written notice of appeal, clearly stating the grounds that the appeal is based upon, with the Hearing Examiner, which appeal shall be governed by ACC Chapters 2.46 and 5.15.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. 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: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____