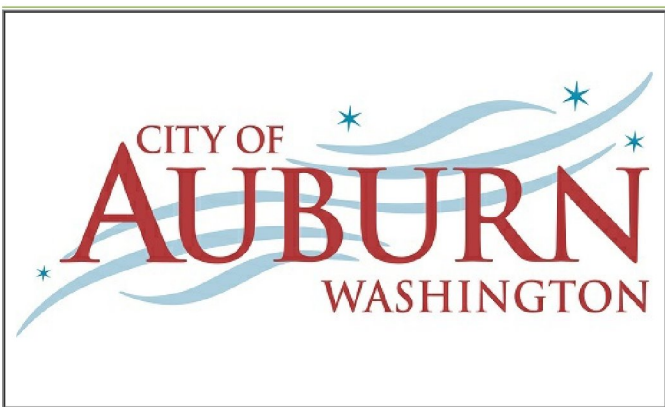


	City Council Study Session July 8, 2024 - 5:30 PM Finance and Internal Services SFA - City Hall Council Chambers AGENDA Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
---	---

I. CALL TO ORDER

II. PUBLIC PARTICIPATION

A. Public Participation

The Auburn City Council Study Session Meeting scheduled for Monday, July 8, 2024 at 5:30 p.m. will be held in person and virtually.

Virtual Participation Link:

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

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

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

Telephone: 253 205 0468

Toll Free: 888 475 4499

Zoom: <https://us06web.zoom.us/j/84700844252>

B. Roll Call

III. AGENDA MODIFICATIONS

IV. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

A. Briefing - Permit Timelines and Legislative Mandates (Krum) (30 Minutes)

Presentation on permitting timeline requirements and upcoming changes in response to recent Washington State Legislation

B. REDI Report Out

V. FINANCE AND INTERNAL SERVICES DISCUSSION ITEMS

A. Ordinance No. 6943 (Thomas) (5 Minutes)

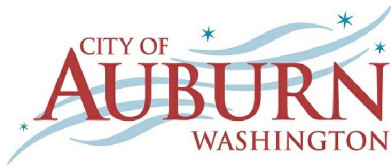
An Ordinance amending Sections 3.53.020, 3.53.040, and 3.54.150 of the Auburn City Code relating to the administration of the City Business & Occupation (B&O) Tax

B. Ordinance No. 6944 (Thomas) (5 Minutes)

An Ordinance amending Auburn City Code Section 3.52.020 and repealing Auburn City Code Section 3.52.040 related to the administration of City Admissions Tax

VI. 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:

Briefing - Permit Timelines and Legislative Mandates (Krum)
(30 Minutes)

Date:

July 3, 2024

Department:

Community Development

Attachments:

[Permit Timelines Presentation Slides](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background for Motion:**Background Summary:**

Washington State Legislates local project review requirements under Chapter 36.70B RCW. This State Code includes specific requirements of the Project Permit Review Process that the City of Auburn is obligated to meet. Among others, these obligations include maximum review timelines, public notification of application and decisions, and determination of completion processes. RCW 36.70B is implemented by the City under Title 14 "Project Review".

Second Substitute Senate Bill (2SSB) 5290 was passed by Washington State legislature and signed into law in 2023, and will wholly become effective January 1, 2025. 2SSB 5290 includes revisions to RCW 36.70B changing, among other things, existing maximum project permit review timelines. These changes will affect multiple elements of current Community Development project permit review process.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff:

Jason Krum

Meeting Date: July 8, 2024

Item Number:

AUBURN CITY COUNCIL STUDY SESSION

PERMIT TIMELINES & LEGISLATIVE MANDATES

PRESENTED BY DEPARTMENT OF
COMMUNITY DEVELOPMENT

ALEXANDRIA D. TEAGUE

SHANNON HOWARD

JASON KRUM

JULY 8, 2024

Department of Community Development
Planning • Building • Development Engineering • Permit Center
Economic Development • 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

REVIEW REQUIREMENTS

- **RCW 36.70B – Local Project Review**
 - **Determination of completeness**
 - **Notice of application**
 - **Notice of decision**
 - **Public hearing**
 - **Final decision time periods**

WASHINGTON STATE HB 5290

- **HB 5290 passed by State legislature 2023**
- **Key provisions become effective January 1, 2025**
- **Amends RCW 36.70B Local Project Review**
 - **City currently applies requirements of this RCW through Auburn Municipal Code Title 14 Project Review**

CITY REQUIREMENTS UNDER HB 5290

- **Modifies timelines for specific permit decisions**
- **Penalties for exceeding timelines**
 - **Permit Fee Refunds**
 - **Additional project review measures**
- **Tracking and reporting (Department of Commerce)**
- **Streamline review process: Site Plan Review**

AUBURN PERMIT TYPES

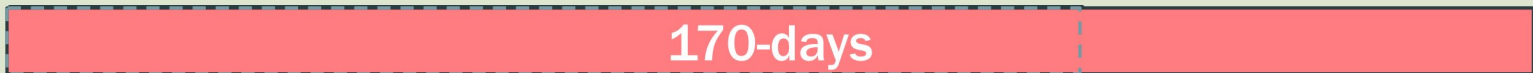
- **ACC 14.03 Types of Permits**
 - **Type I – Administrative, not subject to SEPA Environmental Review**
 - **Type II – Administrative, subject to SEPA Environmental Review**
 - **Type III – Quasi-judicial decisions made by the Hearing Examiner (w/ staff recommendation)**

CITY REQUIREMENTS UNDER HB 5290 AUBURN PERMIT REVIEW TIMELINES

- Currently 120 days for most projects

- Type I:  65-days

- Type II:  100-days

- Type III:  170-days

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

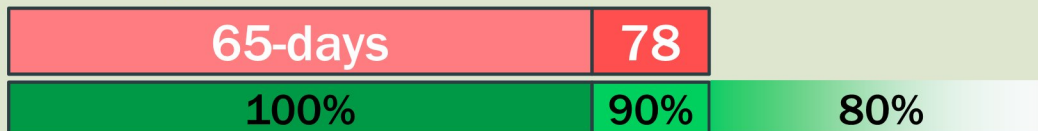
CITY REQUIREMENTS UNDER HB 5290 PERMIT FEE REFUNDS

- **Permit Fee Refunds**
 - **80% of fee collected initially**
 - **If timeline met: 20% fee can be collected**
 - **If timeline exceeded (up to 20% of deadline):
10% of fees can be collected**
 - **Type I (78-days) / Type II (120-days) / Type III (204-days)**
 - **If review exceeded 20% of deadline: 20% of fee forfeited**

CITY REQUIREMENTS UNDER HB 5290

PERMIT FEE REFUNDS

- **Type I:**



- **Type II:**



- **Type III:**



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

CITY REQUIREMENTS UNDER HB 5290 TRACKING AND REPORTING

- Annual report to Department of Commerce
 - Number of applications
 - Number of decisions issued *before* deadline
 - Number of decisions issued *after* deadline
 - Average processing time (and standard deviation)
- Online posting of annual report
- First report due March 1, 2025 (July 1st thereafter)

CITY REQUIREMENTS UNDER HB 5290 ADDITIONAL PROJECT REVIEW MEASURES

- Additional project review measures encouraged
 - Ten measures identified in RCW 36.70B.160 (a)-(j)
 - Offering expedited review
 - ILA to share permitting staff/resources
 - On-call permitting assistance budgeted
 - New additional positions budgeted
 - Post-review meetings with applicants
- Jurisdictions not meeting timelines > 50%
 - Additional project review measures mandatory

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

COMMUNITY DEVELOPMENT RESPONSE



- Department workgroup formed 2023 – Goals:
 - Compliance with zero penalties
 - Minimize disruption to customer
 - Identify areas of improvement
 - Standardize data collection

Over 200-hrs of
staff time to date!

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

COMMUNITY DEVELOPMENT RESPONSE

- Next steps:
 - Title 14 Code Update
 - Policies and Procedures Updates
 - Adopting optional measures to mitigate financial penalties (for now)
 - Prepare for annual report generation
 - Currently tracking for required 2024 report (Timeline compliance not required yet)
 - Internal and External Education/Outreach



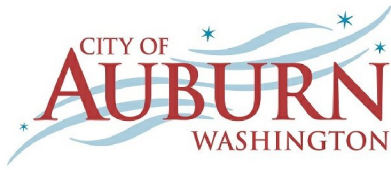
SERVICE • ENVIRONMENT • ECONOMY • CHARACTER • SUSTAINABILITY • WELLNESS • CELEBRATION

QUESTIONS?

Department of Community Development
Planning • Building • Development Engineering • Permit Center
Economic Development • 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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6943 (Thomas) (5 Minutes)

Department:

Finance

Attachments:

[Ord 6943](#)

Date:

July 3, 2024

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background for Motion:**Background Summary:**

Ordinance No. 6943 amends portions of Auburn City Code (ACC) 3.53 and 3.54 as it relates to the City's B&O Tax and Administrative Provisions. This amendment provides for clarification for the definition of "warehouse" and conditions for consideration of waiver requests for penalties and interest.

The warehouse definition further clarifies and identifies the types of items and activities that are considered "stored". Additionally, this amendment clarifies that outdoor warehouse space is measured based on the space available for warehousing, not solely on the size or amount of goods currently being stored.

Changes to the administrative Code for penalty and interest waivers add conditions for eligibility if the following are met: the taxpayer has paid and filed all required taxes within the past 24-months; and any underpaid amounts which resulted in penalties and interest were the result of written instruction from the Director.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

Staff:

Jamie Thomas

Meeting Date: July 8, 2024

Item Number:

ORDINANCE NO. 6943

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON AMENDING SECTIONS 3.53.020, 3.53.040, AND 3.54.150 OF THE AUBURN CITY CODE RELATING TO THE ADMINISTRATION OF THE CITY BUSINESS & OCCUPATION (B&O) TAX

WHEREAS, Auburn City Code (ACC) Chapter 3.53 enacts the City's B&O tax and ACC 3.54 adopts corresponding provisions administering the B&O tax; and

WHEREAS, the Auburn B&O tax is imposed on business gross receipts and on the square footage of business warehouses located in Auburn; and

WHEREAS, the Auburn City Code contains penalties that the City may impose on a business for failure to pay the B&O tax while also providing for the Finance Director to waive penalties and interest under certain circumstances; and

WHEREAS, certain provisions in ACC 3.53.020, ACC 3.53.040 and ACC 3.54.150 concerning the definition of "warehouse" and the waiver of tax penalties and interest require revision to promote consistency and uniformity throughout the code, and to enable greater clarity and precision in the administration and implementation of the City's B&O tax; and

WHEREAS, the revisions proposed in this ordinance are in the best interest of the City and its taxpayers.

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

Section 1. Amendment to City Code. Section 3.53.020 is hereby amended to read as set forth in Exhibit A attached to this Ordinance.

Section 2. Amendment to City Code. Section 3.53.040 is hereby amended to read as set forth in Exhibit A attached to this Ordinance.

Section 3. Amendment to City Code. Section 3.54.150 is hereby amended to read as set forth in Exhibit B attached to this Ordinance.

Section 4. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 5. 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 6. 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

Douglas Ruth, Senior City Attorney

Published: _____

Exhibit A

Ordinance 6943

3.53.020 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. “Adult family home” means a residential home licensed by the Washington State Department of Social and Health Services (DSHS) pursuant to Chapter [70.128](#) RCW in which a person or persons provides personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

B. *Advance, Reimbursement.*

1. “Advance” means money or credits a taxpayer receives from a customer or client for the purpose of paying costs or fees on behalf of the customer or client.

2. “Reimbursement” means money or credits a taxpayer receives from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

C. *Agricultural Product, Farmer.*

1. “Agricultural product” means any product of plant cultivation or animal husbandry including, but not limited to: a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW [15.85.020](#); plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW [15.85.020](#), or a bird, or insect, or the substances obtained from such animal. “Agricultural product” does not include animals intended to be pets, marijuana, or marijuana-infused products as defined by RCW [69.50.101\(y\)](#) and [\(ff\)](#).

2. “Farmer” means any person engaged in the business of growing or producing, upon the person’s own lands or upon lands in which the person has a present right of possession, any agricultural product whatsoever for sale. “Farmer” does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person’s own consumption.

ORD 6943 EXHIBIT A

“Farmer” does not include a person selling any animal or substance obtained therefrom in connection with the person’s business of operating a stockyard or a slaughter or packing house. “Farmer” does not include any person in respect to the business of taking, cultivating, or raising timber. “Farmer” does not include any person engaged in the business of growing, producing, processing, selling or distributing marijuana.

D. *Artistic or Cultural Organization.*

1. The term “artistic or cultural organization” means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection [\(D\)\(10\)](#) of this section, for viewing or attendance by the general public.
2. The organization must be a not-for-profit corporation under Chapter [24.03](#) RCW.
3. The organization must be managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under Chapter [24.12](#) RCW.
4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws.
5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.
6. Assets of the organization must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the organization, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption.
7. The organization must be duly licensed or certified when licensing or certification is required by law or regulation.

ORD 6943 EXHIBIT A

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, Vietnam or disabled veteran status, sexual orientation, or the presence of any mental or physical disability.

10. The term “artistic or cultural exhibitions, presentations, or performances or cultural or art education programs” is limited to:

- a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
- b. A musical or dramatic performance or series of performances; or
- c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

E. “Assisted living facility” means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care. “Assisted living facility” shall not include facilities certified as group training homes pursuant to RCW [71A.22.040](#), nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development.

F. “Athletic or fitness facility” means an indoor or outdoor facility or portion of a facility that is primarily used for: exercise classes; strength and conditioning programs; personal training services; tennis, racquetball, handball, squash, or pickleball; or other activities requiring the use of exercise or strength training equipment, such as treadmills, elliptical machines, stair climbers, stationary cycles, rowing machines, pilates equipment, balls, climbing ropes, jump ropes, and weightlifting equipment.

ORD 6943 EXHIBIT A

G. "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

H. "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

I. "City" means the city of Auburn, Washington.

J. "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

1. Any use as a consumer; and
2. The manufacturing of articles, substances or commodities.

K. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under RCW Title [80](#) and for which a separate charge is made.

L. "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's business. "Consumer" includes, among others and without limiting its scope, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for a consumer other than for the purpose of:
 - a. Resale as tangible or intangible personal property in the regular course of business;
 - b. Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;
 - c. Incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of

ORD 6943 EXHIBIT A

such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or

d. Consuming the property in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

2. Any person engaged in any business activity that is taxable under ACC [3.53.040](#);
3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in this section, other than for resale in the regular course of business;
5. Any person who is an end user of software;
6. Any person engaged in the business of “public road construction” with respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing, or spreading the property in or upon the right-of-way of a publicly owned street, place, road, highway, easement, bridge, tunnel, or trestle, or in or upon the site of a publicly owned mass public transportation terminal or parking facility;
7. Any person who is an owner, lessee, or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;
8. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business; or
9. Any person engaged in “government contracting.” Any such person shall be a consumer within the meaning of this subsection with respect to tangible personal

ORD 6943 EXHIBIT A

property incorporated into, installed in, or attached to such building or other structure by such person. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of “consumer.”

M. “Delivery” means the transfer of possession of tangible personal property between the seller and the buyer or the buyer’s representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer’s representative first takes physical control of the property or exercises dominion and control over the property. “Dominion and control” means the buyer has the ability to put the property to the buyer’s own purposes. It means the buyer or the buyer’s representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer’s representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer’s representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (RCW Title [62A](#)) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

N. “Director” means the finance director of the city or any officer, agent or employee of the city designated to act on the director’s behalf.

O. “Digital automated service,” “digital code” and “digital goods” have the same meaning as in RCW [82.04.192](#).

P. “Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW [82.04.050\(2\)\(q\)](#) and [\(6\)\(b\)](#).

Q. “Eligible gross receipts tax” means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within ACC [3.53.040](#); and

ORD 6943 EXHIBIT A

2. Is measured by the gross volume of business, in terms of gross receipts, and is not an income tax or value added tax; and
3. Is not, pursuant to law or custom, separately stated from the sales price; and
4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
5. Is a tax imposed by a local jurisdiction, whether within or without the state of Washington, and not by a country, state, province, or any other nonlocal jurisdiction above the county level.

R. *Engaging in Business.*

1. The term “engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
2. This subsection sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the city without having to register and obtain a business license or pay city business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection [\(R\)\(1\)](#) of this section. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.
3. Without being all inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license:
 - a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.

ORD 6943 EXHIBIT A

- b. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the city.
- c. Soliciting sales.
- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- f. Installing, constructing, or supervising installation or construction of real or tangible personal property.
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- h. Collecting current or delinquent accounts.
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.

ORD 6943 EXHIBIT A

- n. Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
 - p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another person acting on its behalf.
4. If a person, or their employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license and pay tax:
- a. Meeting with suppliers of goods and services as a customer.
 - b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of directors member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
 - d. Renting tangible or intangible property as a customer when the property is not used in the city.
 - e. Attending, but not participating in, a "trade show" or "multiple vendor events." Persons participating at a trade show shall review Chapter [2.23](#) ACC, Special Event Permits.
 - f. Conducting advertising through the mail.
 - g. Soliciting sales by phone from a location outside the city.
5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license;

ORD 6943 EXHIBIT A

provided, that it engages in no other business activities in the city. Such activities do not include those in subsection [\(R\)\(4\)](#) of this section.

6. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

S. “Extracting” is the activity engaged in by an extractor and is reportable under the extracting classification.

T. *Extractor.*

1. “Extractor” means every person who from the person’s own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products.

2. “Extractor” does not include persons performing under contract the necessary labor or mechanical services for others; persons meeting the definition of “farmer” under RCW [82.04.213](#), or persons producing cannabis.

3. When an “extractor” is also a “manufacturer” under this chapter, the principles of WAC [458-20-135](#) (as now enacted or hereafter amended) shall apply.

U. “Extractor for hire” means a person who performs under contract necessary labor or mechanical services for an extractor.

V. “Gross income of the business” means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used,

ORD 6943 EXHIBIT A

labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

W. “Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

X. “Gross receipts” has the same meaning as gross income.

Y. “Hospital” means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of 24 hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. “Hospital” as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician’s offices where patients are not regularly kept as bed patients for 24 hours or more; nor does it include nursing homes, as defined and which come within the scope of Chapter [18.51](#) RCW; nor does it include birthing centers, which come within the scope of Chapter [18.46](#) RCW; nor does it include psychiatric hospitals, which come within the scope of Chapter [71.12](#) RCW; nor any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

Z. *International Investment Management Services.*

1. “International investment management services” includes investment research, investment consulting, fund administration, fund distribution, investment transactions, or related investment services provided to persons for or on behalf of a collective investment fund. A person is considered to be engaged in providing

ORD 6943 EXHIBIT A

international investment management services if such person is providing investment management services and/or is a member of an affiliated group (as defined by RCW [82.04.293\(2\)\(b\)](#)) primarily in the business of providing investment management services to collective investment funds, and at least 15 percent of the gross income of the person and/or affiliated group is derived from providing investment management services to any of the following:

- a. Persons or collective investment funds residing outside the United States; or
 - b. Collective investment funds with at least 50 percent of their investment assets located or issued outside the United States.
2. For the purpose of this section, "collective investment fund" includes:
 - a. A mutual fund or other regulated investment company as defined in [26](#) USC [§851\(a\)](#), as now enacted or hereafter amended;
 - b. An investment company, as defined in [15](#) USC [§ 80\(a\)\(3\)](#) (as now enacted or hereafter amended), as well as any entity that would be an investment company for this purpose but for the exemptions contained in [15](#) USC [§ 80\(a\)\(3\)](#);
 - c. An employee benefit plan, which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to [29](#) USC [§1001](#) et seq., or that is described in [26](#) USC [§§125, 401, 403, 408, 457, 501\(c\)\(9\)](#), and [501\(c\)\(17\)](#) through [\(24\)](#), or a similar plan maintained by a state or local government, or a plan trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;
 - d. A fund maintained by a tax exempt organization, as defined in [26](#) USC [§501\(c\)\(3\)](#) for operating, quasi-endowment, or endowment purposes;
 - e. Funds that are established for the benefit of such tax exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or
 - f. Collective investment funds similar to those described in subsections [\(Z\)\(2\)\(a\)](#) through [\(Z\)\(2\)\(e\)](#) of this section created under the laws of a foreign jurisdiction.

ORD 6943 EXHIBIT A

AA. "Liquor" shall have the same meaning as RCW [66.44.010](#).

BB. "Lottery commissions" are commissions received from sales of lottery and scratch tickets to a consumer.

CC. "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

DD. "Manufacturer," "To Manufacture."

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than 20 percent of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. A business not located in this city that is the owner of materials or ingredients processed for it in this city by a processor for hire shall be deemed to be engaged in business as a manufacturer in this city.

2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- a. The production of special made or custom made articles;
- b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing,

ORD 6943 EXHIBIT A

preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

“To manufacture” shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

EE. *Newspaper, Magazine, Periodical.*

1. “Newspaper” means a publication offered for sale regularly at stated intervals at least once per week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.
2. “Magazine” or “periodical” means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

FF. “Office” or “place of business” means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

1. Whose address the person uses as their business mailing address; and
2. Where the place of primary use is shown on a telephone billing or a location containing a telephone line, listed in a public telephone directory or other similar publication, under the business name; and
3. Where the person holds themselves out to the general public as conducting regular business through signage or other means; and
4. Where the person is required to obtain any appropriate state and local business license or registration unless the person is exempted by law from such requirement.

A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business.

ORD 6943 EXHIBIT A

If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the city will be deemed the place of business.

GG. "Option to purchase" shall mean a continuing offer or contract by which owner stipulates with another that the latter shall have the right to buy property at a fixed dollar price within a certain time. An agreement is only an option when no obligation rests on the potential buyer to make any payment except such as may be agreed upon by the parties as consideration to support the option until the potential buyer has made up their mind within a time specified to complete the purchase. The use of the term "fair market value" or any other like term shall not be substituted for a fixed dollar price in determining if an "option to purchase" exists.

HH. "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

II. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to 20 percent or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

JJ. "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort. "By-product" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

ORD 6943 EXHIBIT A

KK. "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

LL. "Retail floor space" means the area where items are on display for sale to the public, together with the walkways and open spaces associated with such display.

MM. "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquetball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons;
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding (a) horticultural services provided to farmers and (b) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and
7. The following personal services: physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.
8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

ORD 6943 EXHIBIT A

NN. "Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items.

OO. *Sale, Casual or Isolated Sale.*

1. "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.
2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

PP. *Sale at Retail, Retail Sale.*

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW [82.04.470](#), and who:
 - a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
 - b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or
 - c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a

ORD 6943 EXHIBIT A

chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW [82.04.065](#). The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a “sale at retail” or “retail sale” even though such property is resold or utilized as provided in subsections [\(PP\)\(1\)\(a\)](#) through [\(PP\)\(1\)\(e\)](#) of this section following such use.

f. Purchases for the purpose of satisfying the person’s obligations under an extended warranty as defined in subsection [\(PP\)\(7\)](#) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. “Sale at retail” or “retail sale” also means every sale of tangible personal property to persons engaged in any business activity which is taxable under ACC [3.53.040\(A\)\(7\)](#).

3. “Sale at retail” or “retail sale” shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

ORD 6943 EXHIBIT A

- b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;
- c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
- d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
- e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under Chapter [82.16](#) RCW;
- f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real

ORD 6943 EXHIBIT A

property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The installing, repairing, altering, or improving of digital goods for consumers;

h. The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections [\(PP\)\(3\)\(a\)](#) through [\(PP\)\(3\)\(g\)](#) of this section when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a “sale at retail” or “retail sale” even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection [\(PP\)\(1\)](#) of this section and nothing contained in subsection [\(PP\)\(1\)](#) of this section shall be construed to modify this subsection.

4. “Sale at retail” or “retail sale” shall also include the providing of competitive telephone service to consumers.

5. “Sale at retail” or “retail sale” shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW [82.04.470](#), regardless of the method of delivery to the end user.

a. For purposes of this subsection [\(PP\)\(5\)](#), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

b. The term “sale at retail” or “retail sale” does not include the sale of or charge made for custom software; or the customization of prewritten software.

c. The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the

ORD 6943 EXHIBIT A

charge for the service is on a per use, per user, per license, subscription, or some other basis.

- i. The service described in this subsection (PP)(5)(c) includes the right to access and use prewritten software to perform data processing.
- ii. For purposes of subsection [\(PP\)\(5\)\(c\)\(i\)](#) of this section “data processing” means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the state of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind (public road construction).

7. “Sale at retail” or “retail sale” shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, “extended warranty” means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term “extended warranty” does not include an agreement, otherwise meeting the definition of “extended warranty” in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

8. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to Chapter [35.82](#) RCW, including the installing

or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. (This should be reported under the service and other classification as defined under ACC [3.53.040\(A\)\(7\).](#))

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This should be reported under the service and other classification as defined under ACC [3.53.040\(A\)\(7\).](#))

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection (PP)(11) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to

ORD 6943 EXHIBIT A

have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. “Sale at retail” or “retail sale” shall also include the installing, repairing, altering, or improving of digital goods for consumers.

QQ. “Sale at wholesale” or “wholesale sale” means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection [\(PP\)\(5\)\(b\)](#) of this section, which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW [80.04.010](#) for the purpose of resale, as contemplated by RCW [35.21.715](#).

RR. “Service” means any sale or charge made for personal, business or professional service, including amounts designated as rents, fees, or admissions, not otherwise included within any other tax classification defined herein; provided, that the term “service” excludes retail or wholesale services.

SS. *Software, Prewritten Software, Custom Software, Customization of Canned Software, Master Copies, Retained Rights.*

1. “Prewritten software” or “canned software” means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software;

ORD 6943 EXHIBIT A

however, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

2. "Custom software" means software created for a single person.

3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

6. "Software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information, used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients, regardless of the media upon which that documentation is provided, that describe the code and its use, operation, and maintenance and that typically are delivered with the code to the consumer. All software is classified as either canned or custom.

TT. "Taxpayer" means any "person," as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

ORD 6943 EXHIBIT A

UU. "Tuition fee" includes library, laboratory, health service, and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by [26 USC §501\(c\)\(3\)](#), as hereafter amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with Chapter [28B.90](#) RCW, and in accordance with RCW [82.04.4332](#) or defined as a degree-granting institution under RCW [28B.85.010\(3\)](#) and accredited by an accrediting association recognized by the United States Secretary of Education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

VV. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

WW. *Value of Products.*

1. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.
2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the city, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall

ORD 6943 EXHIBIT A

correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection [\(WW\)\(2\)](#) of this section, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

XX. “Warehouse” means every structure or any part thereof that is used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business, including but not limited to wherein facilities are offered for the storage of tangible personal property. ~~It includes~~ the following:

1. “Storage warehouse” means a building or structure, or any part thereof, in which goods, wares, or merchandise are ~~received for storage~~ stored whether or not for compensation, except field warehouses, fruit warehouses, fruit packing plants, unroasted coffee bean warehouses, warehouses licensed under Chapter [22.09](#) RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves ~~_, and “self-storage” or “mini-storage” facilities whereby customers have direct access to individual storage areas by separate access.~~

2. “Cold storage warehouse” means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing. This term does not include freezer space or frozen food lockers.

ORD 6943 EXHIBIT A

3. “Automobile storage garage” means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.

YY. “Warehouse, outdoor” means an area that is outdoors and is primarily used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business.

ZZ. “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

3.53.040 Imposition of the tax – Tax or fee levied.

Except as provided in subsection [C](#) of this section, effective January 1, 2022, at 12:01 a.m. there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the city of Auburn, whether the person’s office or place of business be within or without the city. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

A. Gross Receipts Tax.

1. Upon every person engaging within the city in business as an extractor; as to such persons, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of 0.100 of one percent (0.001). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the city.
2. Upon every person engaging within the city in business as a manufacturer; as to such persons, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of 0.100 of one percent (0.001). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

ORD 6943 EXHIBIT A

3. Upon every person engaging within the city in the business of making sales at wholesale; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business multiplied by the rate of 0.180 of one percent (0.0018).

4. Upon every person engaging within the city in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business multiplied by the rate of 0.050 of one percent (0.0005).

5. Upon every person engaging within the city in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.100 of one percent (0.001).

6. Upon every person engaging within the city in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of 0.150 of one percent (0.0015).

7. Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in the above subsections; such persons shall report gross receipts under the "service and other tax" classification, and the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 0.100 of one percent (0.001). This classification includes (among others, without limiting its scope and whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale): persons engaged in the business of developing or producing custom software or of customizing canned software, persons producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

8. Lottery commissions are commissions received from the sales of lottery and scratch tickets to a consumer. Taxpayers must report commissions received from

ORD 6943 EXHIBIT A

such sales on the excise tax return under service and other B&O tax classification. Lottery payouts do not qualify for the payouts deduction.

9. Persons otherwise subject to the “service and other tax” classification who engage in business in multiple jurisdictions shall report their service income under the “service and other apportionment” tax classification, and shall allocate their gross receipts in accordance with ACC [3.53.080](#) by using the city’s service income apportionment supplemental form.

B. *Square Footage Tax*. This subsection B applies to any business that uses warehouse space within the city in the course of or in the furtherance of [engaging in businessits business activities](#), regardless of any business activity tax classifications in subsection [A](#) of this section.

1. Upon every person who leases, owns, occupies, or otherwise maintains a warehouse or outdoor warehouse within the city for purposes of engaging in business activities in the city there shall be a tax measured by the number of square feet of business warehouse floor space or outdoor warehouse space. The amount of the tax shall be equal to \$0.10 for each quarterly period of a calendar year for each square foot of warehouse or outdoor warehouse floor space that is leased, owned, occupied, or otherwise maintained within the city during the reporting period, calculated to the nearest square foot.

2. For purposes of this subsection, “warehouse” means every structure ~~or any part thereof that is used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business, including but not limited to wherein facilities are offered for the storage of tangible personal property. It includes~~ “storage warehouses,” “cold storage warehouses” and “automobile storage garage” as defined in ACC [3.53.020\(XX\)](#).

3. For purposes of this subsection, “outdoor warehouse” means an area that is outdoors and primarily used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business.

4. For purposes of this subsection, the square footage of a business warehouse shall be computed by measuring to the inside finish of permanent outer building

ORD 6943 EXHIBIT A

walls and shall include space used by columns and projections necessary to the building. Square footage shall not include stairs, elevator shafts, flues, pipe shafts, vertical ducts, heating or ventilation shafts, janitor closets, and electrical or utility closets. ~~Outdoor warehouse space is measured based on the entire space used for outdoor warehousing and is not measured solely based on the size of the goods, wares, merchandise, or commodities that are being stored.~~

5. For purposes of this subsection, outdoor warehouse space is measured based on the entire space used for outdoor warehousing and is not measured solely based on the size of the goods, wares, merchandise, or commodities that are being stored.

The square footage of an outdoor warehouse shall only include those areas used and/or intended to be used for the storage of goods, wares, merchandise, commodities, inventory, materials, equipment, or other items (whether or not for compensation) in furtherance of engaging in business.

Square footage shall not include: areas used only for employee, customer, or visitor parking; dock high loading areas; buildings or areas used only for retail floor space or rentals to consumers; landscaped areas; storm water facilities; maneuvering areas or drive aisles; areas used only for garbage or recycling pickup; rights-of-way; or other areas clearly not used for the storage of items described in this subsection.

6. Persons with more than one business warehouse or outdoor warehouse within the city must include all business warehouse floor space and outdoor warehouse space for all locations within the city. When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space. Space rented for the storage of goods in a warehouse or outdoor warehouse where no walls or other barriers separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, shall be included in the business warehouse floor space of the person that operates the business warehouse, and not by the person renting the warehouse space.

7. If the square footage tax imposed in this subsection B is equal to or less than the gross receipts tax imposed in subsection [A](#) of this section, no square footage tax will be due. If the square footage tax imposed in this subsection B exceeds the gross receipts tax imposed in subsection [A](#) of this section, the square footage tax will be due, but no gross receipts tax will be due. The taxpayer shall remit the tax

ORD 6943 EXHIBIT A

due on the higher of the two categories, but not both, under subsections [A](#) and [B](#) of this section.

C. *Gross Receipt and Square Footage Tax Thresholds.*

1. *Gross Receipts Threshold.* The gross receipts tax imposed in this section shall not apply to any person whose company-wide gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities during any calendar year is equal to or less than \$500,000, nor shall it apply to any person who does not maintain a place of business in the city whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000.

2. *Square Footage Threshold.* The square footage tax imposed in subsection [B](#) of this section shall not apply to any person unless that person's total area of business space within the city exceeds one of the following thresholds:

- a. Four thousand (4,000) taxable square feet of business warehouse space; or
- b. Two hundred sixty-one thousand three hundred sixty (261,360) taxable square feet (six acres) of outdoor warehouse space.

If the square footage tax applies, it applies to all business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

Exhibit B
Ordinance 6943

3.54.150 Waiver of penalties and interest.

A. The director may cancel any penalties imposed under ACC [3.54.140\(A\)](#) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection [C](#) of this section.

B. A request for cancellation of penalties must be received by the director within 30 days after the date the finance department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

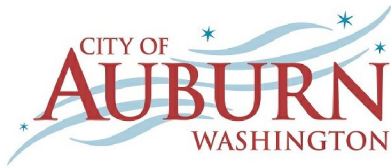
C. The director may waive or cancel a penalty under ACC [3.54.140\(A\)](#) when a taxpayer is ineligible for a penalty waiver or cancellation under subsection [A](#) of this section, if:

1. The taxpayer has timely filed all tax returns and paid all required taxes due for 24-months immediately preceding the period for which the waiver was requested; or
2. The timing of the taxpayer's tax payment was in direct reliance on written instructions from the director to the taxpayer.

D. The director may also waive or cancel interest imposed under this chapter if:

1. The timing of the taxpayer's tax payment was in direct reliance on written instructions from the director to the taxpayer; or
2. The timing of a taxpayer's assessment deficiency payment was based on a due date established for the sole convenience of the director.

E. The director may adopt rules for the waiver or cancellation of penalties and interest under this section.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6944 (Thomas) (5 Minutes)

Department:

Finance

Attachments:

[Ord 6944](#)

Date:

July 3, 2024

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background for Motion:**Background Summary:**

Ordinance No. 6944 amends portions of ACC 3.52, the Admissions Tax Code, for added clarity and applicability of admissions tax and to eliminate obsolete requirements.

Additional language has been added to make it clear that rental charges for the exclusive use of specific equipment and space for amusement, is included in the "admission charge" amount for taxability purposes.

When the Code was first created in 1982, the City required a Certificate of Registration for any "person conducting or operating any place for entrance to which an admission charge is made...". It is unclear at what point over the past 42 years the City stopped issuing Certificates of Registration. After considering the existing language and current operations, the City would like to continue operations as-is and remove these requirements from the Code.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

Staff:

Jamie Thomas

Meeting Date: July 8, 2024

Item Number:

ORDINANCE NO. 6944

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON AMENDING AUBURN CITY CODE SECTION 3.52.020 AND REPEALING AUBURN CITY CODE SECTION 3.52.040 RELATED TO THE ADMINISTRATION OF CITY ADMISSIONS TAX

WHEREAS, ACC Chapter 3.52 imposes and administers the City's admissions tax, which is authorized by RCW 35.21.280; and

WHEREAS, section ACC 3.52.040 requires Auburn businesses that charge an admission to annually apply to the city for a certificate of registration; and

WHEREAS, the City no longer uses a certificate of registration to track businesses that charge admission fees and it has not issued such certificates for many years; and

WHEREAS, repeal of the section simplifies and improves the readability of the code; and

WHEREAS, section ACC 3.52.020 contains a definition of "admission charge," which describes various admission charges including rental charges for equipment used in recreation and amusement activities; and

WHEREAS, the definition of "admission charge" requires revision to promote consistency and uniformity throughout the code, and to enable greater precision in the administration of the Auburn's admission tax; and

WHEREAS, repeal of the antiquated section of ACC 3.52 and the revisions proposed in this ordinance are in the best interest of the City and its taxpayers.

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

Ordinance No. 6944

July 3, 2024~~July 3, 2024~~~~July 2, 2024~~

Page 1 of 4

Section 1. Repeal of Section of City Code. Section 3.52.040 of the Auburn City Code is hereby repealed.

Section 2. Amendment to City Code. Section 3.52.020 of the Auburn City Code is hereby amended to read as set forth in Exhibit A attached to this Ordinance.

Section 3. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 4. 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 5. 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

Douglas Ruth, Senior City Attorney

Published: _____

Chapter 3.52
ADMISSION TAX

Sections:

- 3.52.010 Tax levied.
- 3.52.020 Definitions.
- 3.52.030 Sign to be posted.
- 3.52.040 ~~Certificate of registration.~~ *Repealed.*
- 3.52.050 Administration, collection and remittance of taxes.
- 3.52.060 Collection and remittance for transitory or temporary amusements.
- 3.52.070 Reports and remittances by owner.
- 3.52.080 *Repealed.*
- 3.52.090 *Repealed.*
- 3.52.100 *Repealed.*
- 3.52.110 *Repealed.*
- 3.52.120 Collection of tax by civil action.
- 3.52.130 Violations – Penalty.
- 3.52.140 Effective date.

3.52.020 Definitions.

A. “Admission charge,” in addition to its usual and ordinary meaning, includes:

1. Charge made for season tickets or subscriptions;
2. A cover charge or a charge made for the use of seats or tables reserved or otherwise, and similar accommodations;
3. A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; ~~If persons renting or using and where the rental of the equipment or facilities also pay a charge to enjoy or participate in the recreation or amusement, the total is necessary to the enjoyment of the privilege for which general admission is charged, the~~ combined charge shall be the admission charge;
4. A charge made for admission to any theater, cabaret, tavern, dance hall, amphitheater, private club, auditorium, observation tower, stadium, athletic pavilion

or field, baseball or athletic park, golf course, or any similar place, and includes equipment to which persons are admitted for purposes of recreation such as merry-go-rounds, ferris wheels, dodge'ems, roller coaster, go carts and other rides, whether such rides are restricted to tracks or not;

5. Charge made for automobile parking where the amount of the charge is determined according to the number of passengers in an automobile;

6. A sum of money referred to as a "donation" which must be paid before entrance is allowed;

7. The amount of an increase in the price of refreshments, service or merchandise in a place if no fixed admission charge or cover charge is imposed, but the price charged for refreshments, service or merchandise is higher during the time entertainment or dancing is provided than at other times.

B. "Place" includes, but is not limited to, theaters, dance halls, amphitheaters, auditoriums, stadiums, athletic pavilions and fields, baseball and athletic parks, circuses, side shows, swimming pools, outdoor amusement parks, and such attractions as merry-go-rounds, ferris wheels, dodge 'ems, roller coasters, and observation towers within the city limits.

C. "Subscription" means, in addition to its usual and ordinary meaning, annual membership dues or fees in an organization whose principal purpose is to present theatrical or musical performance for its members.

~~3.52.040 — Certificate of registration.~~

~~A person conducting or operating any place for entrance to which an admission charge is made shall, on a form prescribed by the finance director, make application to and procure from the city a certificate of registration which certificate shall be valid until the thirty-first day of December of the year in which it was issued. Such certificate of registration shall be posted in a conspicuous place in each ticket or box office where tickets of admission are sold. (Ord. 3801 § 5, 1982.~~