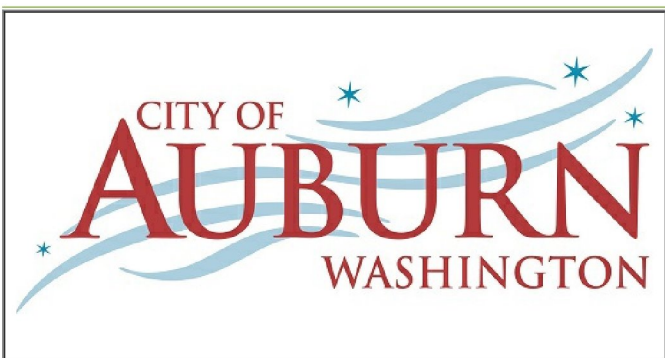


	City Council Meeting February 20, 2024 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. LAND ACKNOWLEDGMENT

We would like to acknowledge the Federally Recognized Muckleshoot Indian Tribe, the ancestral keepers of the land we are gathered on today. We thank them for their immense contributions to our state and local history, culture, economy, and identity as Washingtonians.

III. PUBLIC PARTICIPATION

1. Public Participation

The Auburn City Council Meeting scheduled for Tuesday February 20, 2024 at 7:00 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/88071752192>

A. Pledge of Allegiance

IV. Roll Call

V. APPOINTMENTS

A. Junior City Council

City Council to approve the appointment of Nnamdi Ometu to Auburn Junior City Council for a two year term expiring August 31, 2026

(RECOMMENDED ACTION: Move to approve the appointment of Nnamdi Ometu to Auburn Junior City Council, for a two year term to expire August 31, 2026.)

VI. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

VII. AGENDA MODIFICATIONS

VIII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for Right-of-Way Vacation No. VAC23-0001

City Council to conduct a Public Hearing to consider Right-of-Way Vacation No. VAC23-0001

B. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue.

1. The public can participate in-person or submit written comments in advance.

Participants can submit written comments via mail, fax, or email. All written comments must be received prior to 5:00 p.m. on the day of the scheduled meeting and must be 350 words or less.

Please mail written comments to:
City of Auburn
Attn: Shawn Campbell, City Clerk
25 W Main St
Auburn, WA 98001

Please fax written comments to:
Attn: Shawn Campbell, City Clerk
Fax number: 253-804-3116

Email written comments to:
publiccomment@auburnwa.gov

If an individual requires an accommodation to allow for remote oral comment because of a difficulty attending a meeting of the governing body, the City requests notice of the need for accommodation by 5:00 p.m. on the day of the scheduled meeting. Participants can request an accommodation to be able to provide remote oral comment by contacting the City Clerk's Office in person, by phone (253) 931-3039, or email to publiccomment@auburnwa.gov

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

IX. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baldwin)

X. CONSENT AGENDA

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

- A. Minutes of the February 5, 2024, Special City Council Meeting
- B. Minutes of the February 5, 2024, Regular City Council Meeting
- C. Claims Vouchers (Thomas)
Claims voucher list dated February 14, 2024 which includes voucher number 474965 through 475096, in the amount of \$4,057,471.52 and four wire transfers in the amount of \$809,422.62
- D. Payroll Voucher (Thomas)
Payroll check numbers 539565 through 539568 in the amount of \$81,607.62, electronic deposit transmissions in the amount of \$2,744,877.81, for a grand total of \$2,826,485.43 for the period covering February 1, 2024 to February 14, 2024

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

XI. UNFINISHED BUSINESS

XII. NEW BUSINESS

XIII. ORDINANCES

- A. Ordinance No. 6927 (Thomas)
An Ordinance establishing the Local Sales and Use Tax Rate for Local Revitalization Financing for 2024

(RECOMMENDED ACTION: Move to approve Ordinance No. 6927)

- B. Ordinance No. 6929 (Gaub)
An Ordinance vacating City Right-of-Way located within a portion of 108th Avenue SE that lies South of Lea Hill Road within the City of Auburn

(RECOMMENDED ACTION: Move to approve Ordinance No. 6929.)

- C. Ordinance No. 6930 (Thomas)
An Ordinance amending Auburn City Code (ACC) Chapters 3.53, 3.54 and 3.62 related to the administration of City taxes

(RECOMMENDED ACTION: Move to approve Ordinance No. 6930)

D. Ordinance No. 6932 (Gaub)

An Ordinance transferring a City Telecommunications Franchise from Sprint Communications Company, L.P. (as a T-Mobile Subsidiary) to Sprint Communications Company, L.P. (as a Cogent Subsidiary)

(RECOMMENDED ACTION: Move to approve Ordinance No. 6932.)

XIV. MAYOR AND COUNCILMEMBER REPORTS

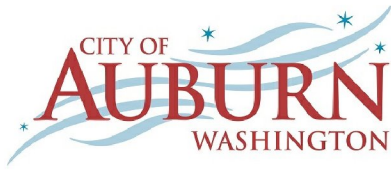
At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. **From the Council**

B. **From the Mayor**

XV. 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:

Public Hearing for Right-of-Way Vacation No. VAC23-0001

Date:

January 4, 2024

Department:

Public Works

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to hold a Public Hearing in consideration of Right-of-Way Vacation No. VAC 23-0001. See Ordinance No. 6929 for further action on this item.

Background for Motion:**Background Summary:**

Per Auburn City Code Chapter 12.48 a Public Hearing shall be held to consider the proposed Right-of-Way Vacation for VAC23-0001 for right-of-way located within a portion of 108th Avenue SE that lies south of Lea Hill Road.

The date of the Public Hearing was set by Resolution No. 5749 on January 16, 2024.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

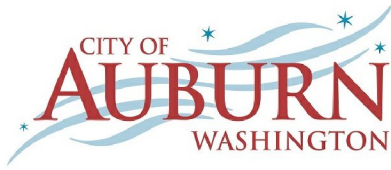
Staff:

Ingrid Gaub

Meeting Date: February 20, 2024

Item Number:

PH.1



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the February 5, 2024, Special City Council Meeting

Date:

February 12, 2024

Department:

City Council

Attachments:

[02-05-2024 Special City Council Minutes](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

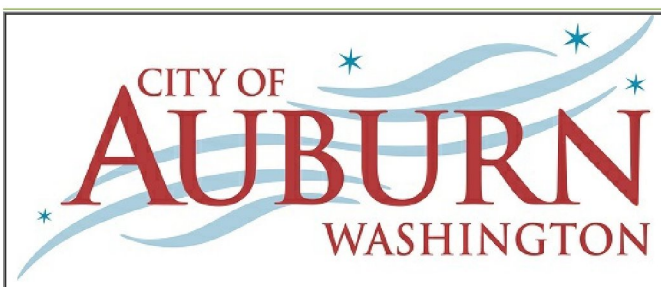
Revised Budget: \$0

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

Meeting Date: February 20, 2024

Staff:

Item Number: CA.A



**Special City Council Meeting
February 5, 2024 - 6:00 PM
City Hall Council Chambers
MINUTES**

I. CALL TO ORDER

Mayor Nancy Backus called the meeting to order at 6:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street.

II. LAND ACKNOWLEDGEMENT

III. PUBLIC PARTICIPATION

1. Public Participation

The City Council Meeting was held in person and virtually.

A. Pledge of Allegiance

Mayor Backus led those in attendance in the Pledge of Allegiance.

IV. ROLL CALL

Councilmembers present: Deputy Mayor Larry Brown, Hanan Amer, Kate Baldwin, Cheryl Rakes, Clinton Taylor, Tracy Taylor, and Yolonda Trout-Manuel.

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Harry Boesche, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Parks, Arts, and Recreation Daryl Faber, Arts and Events Manager Julie Krueger, Director of Equity, and Inclusion Brenda Goodson-Moore, Director of Human Resources and Risk Management Candis Martinson, Assistant Director of Community Development Jason Krum, Business Systems Analyst Jonathan Barbano, Deputy City Clerk Rebecca Wood-Pollock, and City Clerk Shawn Campbell.

V. DISCUSSION ITEMS

**A. Department Overview - Parks, Arts, and Recreation (Faber)
(30 Minutes)**

Director Faber and Manager Krueger provided Council with a presentation on the Parks, Arts, and Recreation Department including the organizational structure, their role in the community, the 2022 General Fund expenditures, funding structure, and the different divisions of the Department. They

discussed community events and classes, the Postmark Center for the Arts, recreation programs and facility rentals, the Rec Teen Center, the Senior Activity Center and senior resources, the White River Valley Museum and Mary Olson Farm, the Auburn Golf Course, Park Maintenance, new and future projects, Mountain View Cemetery, advisory boards, and volunteer opportunities.

Council discussed class and activity fees, free activities offered, the Auburn Avenue Theater, the Senior Center volunteer lunch, the bike program, special needs accommodations, Gaines Park, Forest Villa Tot Lot, a bike bus program, community bike rides, and dog parks.

B. Department Overview - Public Works (Gaub) (30 Minutes)

Director Gaub provided Council with a presentation of the Public Works Department including a video which shared an overview of the Department, Airport services, Engineering services and its sub-divisions, Maintenance and Operations services, the infrastructure management cycle, budgeted expenditures, revenue sources, the design and construction process, the maintenance and operations process, and Council interaction.

Council discussed the water treatment facilities tours, and equipment rentals.

VI. ADJOURNMENT

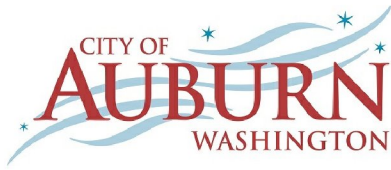
There being no further business to come before the Council, the meeting was adjourned at 7:06 p.m.

APPROVED this 20th day of February, 2024.

NANCY BACKUS, MAYOR

Rebecca Wood-Pollock,
Deputy City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the February 5, 2024, Regular City Council Meeting

Date:

February 12, 2024

Department:

City Council

Attachments:

[02-05-2024 Regular City Council Minutes](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

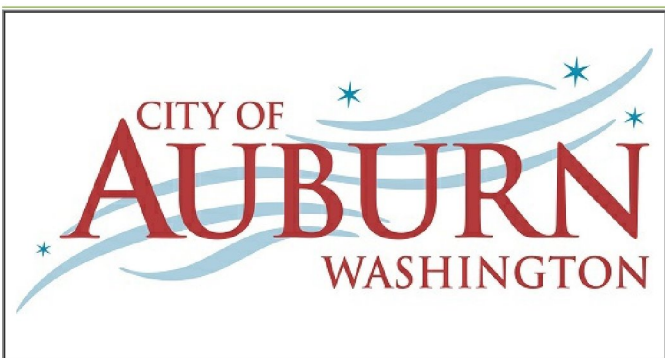
Revised Budget: \$0

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

Meeting Date: February 20, 2024

Staff:

Item Number: CA.B

	City Council Meeting February 5, 2024 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. **CALL TO ORDER**

Mayor Backus called the meeting to order at 7:08 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street.

II. **LAND ACKNOWLEDGMENT**

III. **PUBLIC PARTICIPATION**

1. Public Participation

The City Council Meeting was held in person and virtually.

A. **Pledge of Allegiance**

Mayor Backus led those in attendance in the Pledge of Allegiance.

IV. **Roll Call**

Councilmembers present: Deputy Mayor Larry Brown, Hanan Amer, Kate Baldwin, Cheryl Rakes, Clinton Taylor, Tracy Taylor, and Yolonda Trout-Manuel.

Mayor Nancy Backus and the following staff members present included: Acting City Attorney Harry Boesche, Chief of Police Mark Caillier, Director of Public Works Ingrid Gaub, Director of Parks, Arts, and Recreation Daryl Faber, Arts and Events Manager Julie Krueger, Director of Equity and Inclusion Brenda Goodson-Moore, Human Resources Director Candis Martinson, Assistant Director of Community Development Jason Krum, Business Systems Analyst Jonathan Barbano, Deputy City Clerk Rebecca Wood-Pollock, and City Clerk Shawn Campbell.

V. **APPOINTMENTS**

A. Junior City Council

City Council to approve the appointment of Mikaela Pedraja to Auburn Junior City Council for a two year term expiring August 31, 2026

Deputy Mayor Brown moved and Councilmember Trout-Manuel seconded to approve the appointment of Mikaela Pedraja to the Auburn Junior City

Council for a two year term expiring August 31, 2026.

MOTION CARRIED UNANIMOUSLY. 7-0

VI. ANNOUNCEMENTS, MAYOR'S PROCLAMATIONS, AND PRESENTATIONS

A. Black History Month

Mayor Backus proclaimed February 2024 as "Black History Month" in the City of Auburn.

Director of Equity and Inclusion Goodson-Moore thanked the Mayor and Council for their support.

VII. AGENDA MODIFICATIONS

There were no modifications to the agenda.

VIII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue.

1. The public can participate in-person or submit written comments in advance.

No one came forward to speak.

B. Correspondence

There was no correspondence for Council to review.

IX. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baldwin)

Councilmember Baldwin, Chair of the Finance Ad Hoc Committee, reported she and Councilmember Amer have reviewed the claims and payroll vouchers described on the agenda this evening and recommended their approval.

X. CONSENT AGENDA

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

- A. Minutes of the January 16, 2024, and January 24, 2024,

Special City Council Meetings

B. Minutes of the January 16, 2024, Regular City Council Meeting

C. Minutes of the January 22, 2024, Study Session Meeting

D. Claims Vouchers (Thomas)

Claims voucher list dated January 31, 2024 which includes voucher number 474733 and voucher 474736 through voucher 474874, in the amount of \$2,848,503.88, and five wire transfers in the amount of \$336,743.99

Claims voucher list dated January 31, 2024 which includes voucher number 474732, voucher number 474734 through 474735 and voucher 474875 through voucher 474964, in the amount of \$3,914,604.91, and two wire transfers in the amount of \$4,220,590.30

E. Payroll Voucher (Thomas)

Payroll check numbers 539563 through 539564 in the amount of \$645,117.14, electronic deposit transmissions in the amount of \$2,563,916.11, for a grand total of \$3,209,033.25 for the period covering January 11, 2024 to January 31, 2024

Deputy Mayor Brown moved and Councilmember Amer seconded to approve the consent agenda.

Councilmember C. Taylor requested that the claims vouchers be removed from the Consent Agenda for separate consideration.

MOTION CARRIED UNANIMOUSLY. 7-0

XI. UNFINISHED BUSINESS

Claims voucher list dated January 31, 2024 which includes voucher number 474733 and voucher 474736 through voucher 474874, in the amount of \$2,848,503.88, and five wire transfers in the amount of \$336,743.99

Claims voucher list dated January 31, 2024 which includes voucher number 474732, voucher number 474734 through 474735 and voucher 474875 through voucher 474964, in the amount of \$3,914,604.91, and two wire transfers in the amount of \$4,220,590.30

Council to vote on the approval of Item D on the consent agenda.

MOTION CARRIED UNANIMOUSLY. 6-0. Councilmember C. Taylor abstained.

XII. NEW BUSINESS

There was no new business.

XIII. ORDINANCES

A. Ordinance No. 6931 (Gaub)

An Ordinance providing for the acquisition by Eminent Domain of Property located near or adjacent to Auburn Way South within the City of Auburn, Washington, for Roadway Widening Improvements for Project No. CP1622, Auburn Way South Widening – Hemlock Street SE to Poplar Street SE; declaring public use and necessity; and providing for severability and an effective date

Councilmember T. Taylor moved and Councilmember Trout-Manuel seconded to approve Ordinance No. 6931.

MOTION CARRIED UNANIMOUSLY. 7-0

XIV. RESOLUTIONS

A. Resolution No. 5756 (Gaub)

A Resolution authorizing the Mayor to execute and administer an agreement accepting a grant from the Washington State Department of Ecology for Implementation of Requirements of the National Pollutant Discharge Elimination System Municipal Stormwater Phase II Permit

Councilmember T. Taylor moved and Councilmember Baldwin seconded to adopt Resolution No. 5756.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution No. 5757 (Thomas)

A Resolution authorizing the Mayor to execute an agreement between the City of Auburn and the Department of Ecology to implement the 2023-2025 Local Solid Waste Financial Assistance Grant Program and to accept and expend program grant funds

Councilmember Baldwin moved and Councilmember Amer seconded to adopt Resolution No. 5757.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Resolution No. 5758 (Caillier)

A Resolution accepting a grant award from the Washington Association of Sheriffs and Police Chiefs for Body Worn Cameras

Councilmember C. Taylor moved and Councilmember Amer seconded to adopt Resolution No. 5758.

MOTION CARRIED UNANIMOUSLY. 7-0

XV. MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

Deputy Mayor Brown provided an overview of the Junior City Council.

Councilmember Amer reported she attended the Inclusive Auburn event, Don's Place opening, and a Special Olympics event in Auburn.

Councilmember Baldwin reported she attended the Cities and Schools meeting, REDI Coalition meeting, Auburn Symphonies, Don's Place opening, and the Inclusive Auburn Event.

Councilmember Rakes reported she attended the King County Department of Health meeting, and Don's Place opening.

Councilmember T. Taylor reported she attended the opening of the Muckleshoot exhibit at the Postmark Center for the Arts, and the Seattle Animal Shelter meeting.

Councilmember Trout-Manuel reported she attended the Best Starts for Kids meeting, and the Pierce County Committee of Domestic Violence meeting.

B. From the Mayor

Mayor Backus reported she attended the Inclusive Auburn event, the U.S. Conference of Mayors, encouraged public participation in the City's new Opioid Task Force, attended the Consul General of India welcome event, and testified on Senate Bill 6076.

XVI. ADJOURNMENT

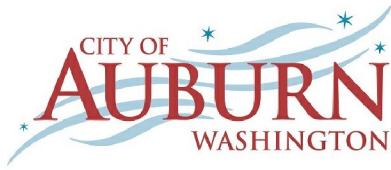
There being no further business to come before the Council, the meeting was adjourned at 7:42 p.m.

APPROVED this 20th day of February, 2024.

NANCY BACKUS, MAYOR

Rebecca Wood-Pollock,
Deputy City Clerk

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AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)

Date:

January 31, 2024

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background for Motion:**Background Summary:**

Claims voucher list dated February 14, 2024 which includes voucher number 474965 through 475096, in the amount of \$4,057,471.52 and four wire transfers in the amount of \$809,422.62.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

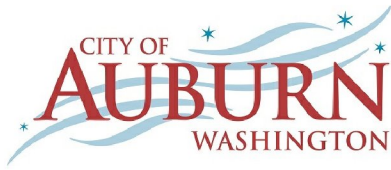
Staff:

Jamie Thomas

Meeting Date: February 20, 2024

Item Number:

CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Voucher (Thomas)

Date:

January 31, 2024

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers.

Background for Motion:**Background Summary:**

Payroll check numbers 539565 through 539568 in the amount of \$81,607.62, electronic deposit transmissions in the amount of \$2,744,877.81, for a grand total of \$2,826,485.43 for the period covering February 1, 2024 to February 14, 2024.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

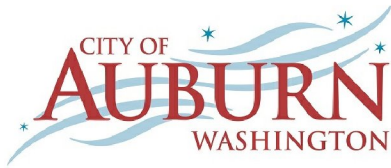
Staff:

Thomas

Meeting Date: February 20, 2024

Item Number:

CA.D



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6927 (Thomas)

Date:

February 8, 2024

Department:

Finance

Attachments:

[Ordinance No. 6927](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Ordinance No. 6927.

Background for Motion:

Ordinance No. 6927 levies 0.0133%, up to \$250,000, against the State's portion of sales tax to help pay the debt service on Local Revitalization Financing Bonds issued by the City in 2010 and refunded in 2020.

Background Summary:

Ordinance No. 6927 levies a 0.0133% sales tax credit against the State Sales Tax for Local Revitalization Financing. SB 5045, authorizing the tax credit, was passed by the State Legislature during the 2009 Regular Session. The intent of the Legislation was to provide financial assistance to cities to assist with financing public improvements in an identified revitalization area to promote Community and Economic Development.

The City first applied for the use of Local Revitalization Financing on August 11, 2009 and the Department of Revenue approved the City's application on September 16, 2009, authorizing up to \$250,000 per year for the local revitalization program (Promenade Capital Improvements).

In 2010, the City issued \$7.24 million in 2010 C/D Bonds for the purpose of funding capital improvements for the Promenade. In October 2020, the City refunded the remaining portion of these bonds by issuing the 2020B LTGO Bonds. The balance of the 2020B bonds at the end of 2023 was \$3.45 million. The sales tax collected from this levy are used to make debt service payments.

The tax credit is available to the City for up to 25 years. 2024 will be the fifteenth year that the City has asked the State for the tax credit. As provided by the state, in order for the City to continue receiving the tax credit, the City must request this each year by Ordinance.

Based upon historical taxable retail sales, the above rate of 0.0133% is estimated to generate \$250,000 for Local Revitalization Funding during the State's fiscal year, July 1, 2024, to June 30, 2025.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

Meeting Date: February 20, 2024

Staff:

Jamie Thomas

Item Number:

ORD.A

ORDINANCE NO. 6927

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF AUBURN, WASHINGTON, ESTABLISHING
THE LOCAL SALES AND USE TAX RATE FOR
LOCAL REVITALIZATION FINANCING FOR 2024

WHEREAS, The City of Auburn ("City") enacted Ordinance No. 6301 on April 19, 2010, which established a local sales and use tax as provided for in RCW 82.14.510; and,

WHEREAS, this tax is imposed in order to pay the debt service on Local Revitalization Financing bonds in accordance with Chapter 39.104 RCW; and,

WHEREAS, Chapter 39.104 RCW provides that the City shall, from time to time, adjust the tax rate so that it is set at the rate reasonably necessary to receive the state contribution over 10 months, in accordance with RCW 82.14.510(3); and

WHEREAS, the Local Sales and Use Tax Rate is set at a rate to generate approximately \$250,000 between July 1, 2024 through June 30, 2025, for Local Revitalization Financing.

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

Section 1. The sales and use tax rate initially established in Section 3.2 of Ordinance No. 6301, and most recently amended by Ordinance No. 6899, is hereby amended to 0.0133%, effective July 1, 2024.

Section 2. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

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

Section 4. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

ATTEST:

NANCY BACKUS, MAYOR

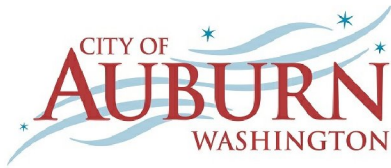
APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Harry Boesche, Acting City Attorney

Published: _____

Ordinance No. 6927
January 25, 2023
Page 2 of 2



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6929 (Gaub)

Date:

January 5, 2024

Department:

Public Works

Attachments:

[Ordinance No. 6929](#)

[Exhibit A](#)

[Exhibit B](#)

[Staff Report](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Ordinance No. 6929.

Background for Motion:

This Ordinance vacates right-of-way located within a portion of 108th Avenue SE that lies south of Lea Hill Road, subject to conditions outlined in the Ordinance.

Background Summary:

Serhiy and Liliya Boyko have applied to the City for Vacation of Right-of-Way located within a portion of 108th Ave SE that lies south of Lea Hill Road. The applicants own the adjacent Parcel No. 0821059033 to the east and have applied for the vacation to resolve building encroachment and maintenance issues that were created when the right-of-way was deeded to King County for roadway purposes in 1976 prior to the Boyko's ownership of the adjacent property. The home that is currently encroaching into the east side of the right-of-way was built in 1920.

The proposed vacation area became right-of-way in 1976 when it was deeded to King County for roadway purposes with King County Short Plat No. 976023 under Warranty Deed Recording No. 7612230657 on December 23, 1976. The area was annexed into the Auburn City Limits on February 29, 2000.

The application has been reviewed by City staff and utility purveyors who have an interest in the right-of-way. Through this review City staff has determined that the right-of-way is not necessary to meet the needs of the City and could be vacated with conditions.

Ordinance No. 6929, if adopted by City Council approves Right-of-Way Vacation No. VAC23-0001 and vacates the right-of-way subject to conditions outlined in the Ordinance.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff:

Ingrid Gaub

Meeting Date: February 20, 2024

Item Number: ORD.B

ORDINANCE NO. 6929

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, VACATING CITY RIGHT-OF-WAY LOCATED WITHIN A PORTION OF 108TH AVENUE SE THAT LIES SOUTH OF LEA HILL ROAD WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City received a petition signed by at least two-thirds (2/3) of the owners of property abutting unopened right-of-way located within a portion of 108th Avenue SE that lies south of Lea Hill Road. The petition requested the City to vacate its interest in this right-of-way; and,

WHEREAS, as required by RCW 35.79.010 and Chapter 12.48 of the Auburn City Code, the City held a timely noticed public hearing in connection with the possible vacation. The hearing took place at the Auburn City Council Chambers on February 20, 2024; and,

WHEREAS, the City Council has considered all matters presented at the Public Hearing on the proposed vacation, and has determined that subject to the conditions set forth in Section 1 of this Ordinance, vacation of this right-of-way is appropriate and in the City's best interests.

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

Section 1. Vacation of City right-of-way. The right-of-way located within a portion of 108th Avenue SE that lies south of Lea Hill Road, located within the City of Auburn, Washington (legally described in attached Exhibit "A", shown on the survey depiction marked as attached Exhibit "B", and subject to an easement for ingress and egress and utilities under King County Recording Number 5662631) is vacated. The

property lying in this described right-of-way shall inure and belong to those persons entitled to receive the property in accordance with RCW 35.79.040, conditioned upon the following:

A. Reservation of a perpetual Nonexclusive Easement in favor of the City (Easement) under, over, through, and upon the west ten (10) feet of the vacated right-of-way (described in Exhibit “A” and depicted in Exhibit “B”) (Easement Area) for the purpose of laying maintaining, and/or installing existing and future water utility facilities. This Easement shall reserve a City right to grant further easements for utilities over, under, and on all portions of the vacated right-of-way.

1. The City shall have the absolute right: (a) for immediate entry upon said Easement Area at times as may be necessary for the purpose of maintenance, inspection, construction, repair, or reconstruction of the above facilities or improvements without incurring any legal obligation or liability; and (b) to place any type of driving surface within the Easement Area deemed necessary by the City.

2. The owners of the adjacent properties agree and shall not in any way block, restrict, or impede access or egress to or from the Easement Area and/or in any way block restrict, or impede the City’s full use of the real property within the Easement Area for the above described purposes. No building, wall, rockery, fence, trees, or structure of any kind shall be erected or planted, nor shall nor shall any fill material be placed within the boundaries of said Easement Area, without the express written consent of the City. Except as required or approved by the City, no excavation shall be made within three feet of any improvements or facilities

within the Easement Area. The surface level of the ground within the Easement Area shall be maintained at its current elevation.

3. This Easement shall be a covenant running with the property parcels adjacent to the Easement Area. It shall burden that real estate, and it shall be binding on the successors, heirs, and assigns of all parties.

B. In accordance with RCW 35.79.030 the City grants a private utility easement to Puget Sound Energy over, under, through and upon the west ten (10) feet of the vacated right-of-way (described in Exhibit “A” and depicted in Exhibit “B”) (Easement Area) for the construction, operation, maintenance, repair, replacement, improvement, and removal of electric distribution facilities. The owners of the adjacent property shall not erect any structures and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantee’s rights.

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

C. In accordance with RCW 35.79.030 the City grants a private utility easement to Comcast Cable Communications, LLC over, under, through and upon the west ten (10) feet of the vacated right-of-way (described in Exhibit “A” and depicted in Exhibit “B”) (Easement Area) for the construction, operation, maintenance, repair, replacement, improvement, and removal of cable facilities. The owners of the adjacent property shall not erect any structures and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantee’s rights.

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

D. Any reserved or granded utility and access easements referenced in Paragraphs A, B, and C above may be modified to accommodate the removal, relocation, and siting of affected utility lines and facilities by agreement between the Utility Owners and the property owners on whose property the utility lines and facilities are located. Any such removal, relocation, or siting must be paid for by the property owners, and must be performed in accordance with applicable laws and standards.

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

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

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

Section 5. **Recording.** The City Clerk is directed to record this Ordinance with the King County Recorder, at which time the vacation outlined in this Ordinance shall be effective under Auburn City Code 12.48.080.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Harry Boesche, Acting City Attorney

Published: _____

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT OF WAY VACATION
(PORTION OF 108TH AVENUE SOUTHEAST)

THE WEST 30.00 FEET OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 5 EAST OF THE WILLAMETE MERIDIAN.

SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS AND UTILITIES UNDER KING COUNTY RECORDING NUMBER 5662631;

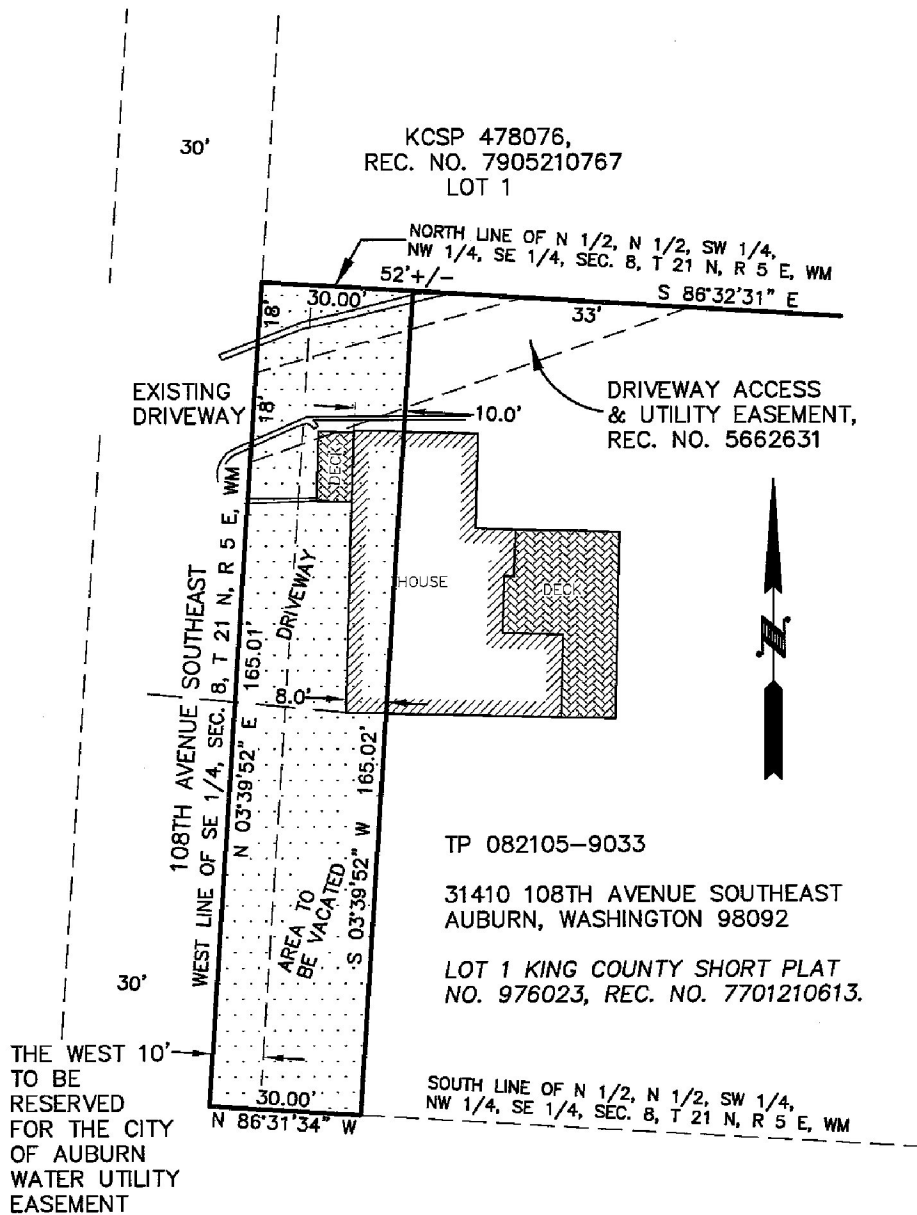
AND SUBJECT TO AN EASEMENT FOR CITY OF AUBURN WATER UTILITIES OVER THE WEST 10.00 FEET THEREOF;

SITUATE THE COUNTY OF KING COUNTY, STATE OF WASHINGTON.

CONTAINING 4,950 SQUARE FEET

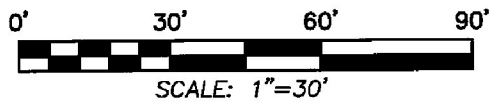


EXHIBIT B RIGHT OF WAY VACATION MAP



LEGEND

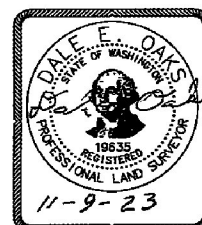
-  AREA TO BE VACATED
-  BUILDING
-  DECK

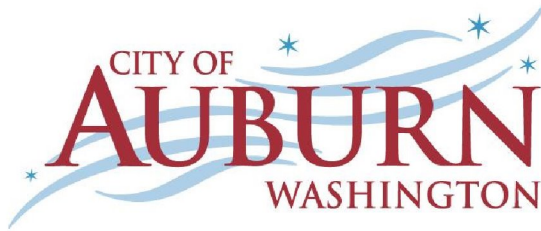


PREPARED FOR:
SERHIY & LILIYA BOYKO

PREPARED BY:
SADLER BARNARD & ASSOC.
717 W. STEWART
PUYALLUP, WA 98371
PHONE: 253-848-5170

REFERENCE:
JOB NO. 2023-086





RIGHT-OF-WAY VACATION STAFF REPORT

Right-of-Way (ROW) Vacation Number VAC23-0001

Applicant: Serhiy and Liliya Boyko

Property Location: Right-of-way located within a portion 108th Ave SE.

Description of right-of-way:

The ROW proposed for vacation is located within a portion of 108th Ave SE that lies south of but does not connect to Lea Hill Road. The proposed ROW is adjacent to Parcel No. 0821059033 on the east side, Parcel No. 0821059041 on the north side, and is bordered by City right-of-way to the west and south. The total area of ROW proposed for vacation is approximately 4,950± square feet.

The proposed ROW vacation area originally became ROW in 1976 when it was deeded as a roadway with King County Short Plat No. 976023 under Warranty Deed Recording No. 7612230657 on December 23, 1976. The area was annexed into Auburn city limits on February 29, 2000.

See Exhibit "A" for legal description and Exhibit "B" for survey depiction.

Proposal:

The Applicant is proposing that the ROW be vacated so that the proposed vacation area can be incorporated into their property and resolve encroachment and maintenance issues that were created when the ROW was dedicated in 1976. The house located on the property and encroaching into the east side of the ROW was built in 1920.

Applicable Policies & Regulations:

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

Public Benefit:

1 of 4
December 13, 2023
VAC23-0001 Staff Report

- Vacated Right-of-Way areas typically have a financial benefit to the general public because the vacated areas are subject to property taxes
- The street vacation decreases the Right-of-Way maintenance obligation of the City.

Discussion:

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

1. Puget Sound Energy (PSE) – PSE has electrical facilities, including poles located in close proximity to the west boundary of the proposed vacation area. An easement of at least 10 feet in width is requested for maintenance and relocation purposes if relocation or undergrounding is ever required in the future.
2. Comcast – Comcast has facilities located on PSE's poles located in close proximity to the west boundary of the proposed vacation area. An easement of at least 10 feet in width is request for maintenance and relocation purposes if relocation or undergrounding is ever required in the future.
3. CenturyLink/Lumen – CenturyLink/Lumen has no facilities or equipment in the proposed vacation area and does not require an easement.
4. Fatbeam – Fatbeam has no facilities or equipment in the proposed vacation area and does not required an easement.
5. Zayo – Zayo has no facilities in the proposed vacation area and does not require and easement.
6. Engineering – All City facilities located in the proposed vacation area will require easements to ensure that they are accessible to the City.
7. Transportation – Transportation has no concerns with proposed vacation. Currently, there are no projects for a future road extension in the area of the proposed vacation in the comprehensive transportation plan.
8. Planning – Planning has no concerns or comments on the proposed vacation.
9. Development Engineering - Access and utility easements are required through the vacated right-of-way to serve the property(s) utilizing the northern part of the vacation area. There is an existing easement in place under KC Recording No. 5662631 dated October 31, 1963 for access and utilities to the northern parcel that was created prior to the ROW being dedicated as ROW. This easement remains in place and will survive the vacation of the ROW.
10. Water – There is an existing 6" water main in 108th Ave SE. A 10 foot easement for City water facilities and maintenance will be required to be reserved across the west 10 feet of the proposed vacation area.
11. Sewer – There are no existing City sewer facilities in the proposed vacation area and no easements are required.
12. Storm – There are no existing City storm facilities in the proposed vacation area and no easements are required.

13. Valley Regional Fire Authority – Review completed and the Fire Marshal had no comments.
14. Solid Waste – No comments.
15. Police – Review completed by Auburn PD. The proposed vacation has no impact on police operations.
16. M&O – No comments.
17. Construction Inspection – No comments.
18. Innovation and Technology – No comments

Assessed Value:

ACC 12.48 states: “The city council may require as a condition of the ordinance that the city be compensated for the vacated right-of-way in an amount which does not exceed one-half the value of the right-of-way so vacated, except in the event the subject property or portions thereof were acquired at public expense or have been part of a dedicated public right-of-way for 25 years or more, compensation may be required in an amount equal to the full value of the right-of-way being vacated. The city engineer shall estimate the value of the right-of-way to be vacated based on the assessed values of comparable properties in the vicinity. If the value of the right-of-way is determined by the city engineer to be greater than \$2,000, the applicant will be required to provide the city with an appraisal by an MAI appraiser approved by the city engineer, at the expense of the applicant. The city reserves the right to have a second appraisal performed at the city’s expense.”

RCW 35.79.030 states the vacation “shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated”.

An appraisal by an MAI appraiser of the subject right-of-way was required to be submitted by the applicant. The appraisal was reviewed and found to be acceptable. The appraisal values the right-of-way using an “Across the Fence” methodology which values the subject right-of-way at \$17,000.00. The right-of-way has been right-of-way for more than 25 years and was provided through warranty deed associated with King County Short Plat No. 976023 in 1976 and annexed into Auburn city limits in 2000.

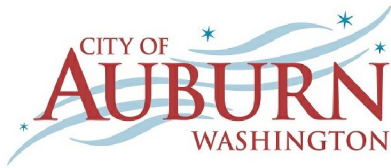
Recommendation:

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

1. An easement shall be reserved for existing and future City water facilities.
2. An easement shall be reserved for Puget Sound Energy electric facilities.
3. An easement shall be reserved for Comcast cable facilities.
4. The existing easement in place under KC Recording No. 5662631 dated October 31, 1963 for access and utilities to the northern parcel that was created prior to the ROW being dedicated as ROW shall remain in place and will survive the vacation of the ROW.
5. Staff recommends that compensation for the value of the right-of-way not be required as it was initially deeded as right-of-way associated with development of a short plat at no cost to the City.



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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6930 (Thomas)

Date:

February 8, 2024

Department:

Finance

Attachments:

[Ordinance No. 6930 B&O Tax Code Revisions](#)

[Ordinance No. 6930 Exhibit A-C](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Ordinance No. 6930.

Background for Motion:

Ordinance No. 6930 amends the City's Business and Occupation Tax Code and administrative provisions to add additional clarity around the intent and applicability of square foot tax for businesses maintaining warehouse space within the City of Auburn.

Background Summary:

Ordinance No. 6930 amends ACC 3.53 Business and Occupation Tax, ACC 3.54 Business and Occupation Tax Administrative Provisions and ACC 3.62.080 Administrative Code for certain City taxes. All amendments to ACC 3.53 are for added clarity and applicability of square foot tax, which includes: adding a definition for "Retail Floor Space"; amendment to the definition of "Warehouse, Outdoor"; and emphasizing the applicability of the square foot tax to all businesses that maintain warehouse space in the course of operating their business.

Amendments to ACC 3.54 and ACC 3.62 are identical and clarify when the Director may waive or cancel penalties. Both Code Sections are administrative provisions, but for different types of taxes. Changes to both Sections ensure consistency in how all waivers for penalties and interest are applied to all business taxes in the City.

Reviewed by Council Committees:

Councilmember: Kate Baldwin

Staff:

Jamie Thomas

Meeting Date: February 20, 2024

Item Number:

ORD.C

ORDINANCE NO. 6930

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON AMENDING AUBURN CITY
CODE (ACC) CHAPTERS 3.53, 3.54 AND 3.62 RELATED
TO THE ADMINISTRATION OF CITY TAXES

WHEREAS, ACC Chapters 3.53 and 3.54 enact and administer the City's B&O tax, and ACC Chapter 3.62 administers other City taxes; and

WHEREAS, certain terms, provisions and definitions of sections within these ACC chapters require revision to promote consistency and uniformity throughout the code, and to enable greater clarity and precision in the administration and implementation of City taxes; 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. Chapter 3.53 of the Auburn City Code is hereby amended to read as set forth in Exhibit A attached to this Ordinance.

Section 2. Amendment to City Code. Chapter 3.54 of the Auburn City Code is hereby amended to read as set forth in Exhibit B attached to this Ordinance.

Section 3. Amendment to City Code. Chapter 3.62 of the Auburn City Code is hereby amended to read as set forth in Exhibit C 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

Harry Boesche, Acting City Attorney

Published: _____

ORD. 6930 —Exhibit A

ACC 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. “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.
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.

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 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 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 section ACC 3.53.040; and

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.

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.
 - 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; 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, 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 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 U.S.C. §851(a), as now enacted or hereafter amended;
- b. An investment company, as defined in 15 U.S.C. §80a-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 U.S.C. §80a-3;
- c. An employee benefit plan, which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to 29 U.S.C. §1001 et seq., or that is described in 26 U.S.C. §§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 U.S.C. §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.

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, 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.

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% 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.

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.

LL.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, racquet ball, 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.

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

~~NN.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.

~~OO.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 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 (OO)(1)(a) through (OO)(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 (OO)(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;

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 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 (OO)(3)(a) through (OO)(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 (OO)(1) of this section and nothing contained in subsection (OO)(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 (OO)(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 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 (OO)(5)(c) includes the right to access and use prewritten software to perform data processing.
 - ii. For purposes of subsection (OO)(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 (OO)(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 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.

PP.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 (OO)(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.

QQ.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.

RR.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; 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.

SS.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.

TT.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 U.S.C. §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.

UU.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.

~~VV.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 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 (VV)(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.

~~WW.XX.~~ “Warehouse” means every structure 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 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.

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.

~~XX.YY.~~ "Warehouse, outdoor" means an area that is outdoors and primarily used for the storage of merchandise, goods, wares, commodities, inventory, materials, ~~or~~ equipment or other items, ~~which are not intended for immediate sale~~, (whether or not for compensation) in furtherance of engaging in business.

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

ACC 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 1% (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 1% (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.

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 1% (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 1% (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 1% (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 1% (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 1% (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 such sales on the excise tax return under Service & 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 its 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 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(WW).

3. For purposes of this subsection, “outdoor warehouse” means an area that is outdoors and ~~is~~ primarily used for the storage of merchandise, goods, wares, commodities, inventory, materials, or 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 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, the square footage of an outdoor warehouse shall only include those areas used and/or intended to be used for the ~~receipt or~~ storage of goods, wares, merchandise, ~~or~~ commodities, inventory, materials, equipment, or other items that are being received and temporarily stored, (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; ~~used primarily for a business warehouse~~; buildings ~~or~~ areas used only for direct sales 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 ~~temporary~~ storage of items described in this subsection ~~goods, wares, merchandise, and commodities in transit~~.

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 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.

ORD. 6930 —Exhibit B

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 ~~imposed~~ 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. Was not licensed, and filing returns; and~~

~~1.2.~~ 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.

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.

ORD. 6930 —Exhibit C

ACC 3.62.080 Waiver of penalties and interest.

A. The director may waive penalties or interest otherwise required by this Chapter or by ACC Chapters 3.40, 3.41, 3.42, 3.52, 3.80, 3.84 or 3.88 If a taxpayer's failure to pay required taxes when due was caused by circumstances beyond the taxpayer's control.

B. A taxpayer may submit a written request to the director for the waiver of penalties or interest under this section within 30 days after the finance department mails the taxpayer a notice that penalties are due. The request must contain facts supporting a waiver under this section. In all cases the burden of producing facts rests upon the taxpayer.

C. The director may waive or cancel a penalty **imposed** when a taxpayer is ineligible for a penalty waiver or cancellation under subsection A of this section, if:

~~1. Was not licensed and filing returns;~~

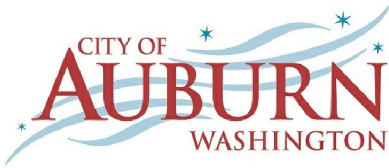
~~1.2.~~ The taxpayer has timely filed all tax returns and paid all required taxes due **under those RCW sections** for 24 months immediately preceding the period for which the waiver was requested.

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. 6932 (Gaub)

Date:

January 24, 2024

Department:

Public Works

Attachments:

[Ordinance No. 6932](#)
[Exhibit 1](#)

Budget Impact:

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

Administrative Recommendation:

City Council to approve Ordinance No. 6932.

Background for Motion:

This Ordinance transfers Franchise Agreement No. FRN21-0003 for Sprint Communications Company, L.P. a wholly owned subsidiary of T-Mobile to Sprint Communications Company, L.P. a wholly owned subsidiary of Cogent.

Background Summary:

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

Sprint Communications Company, L.P. (Sprint) currently holds Franchise Agreement No. FRN21-0003 to operate existing fiber optic telecommunications facilities located in the public way in six east/west road crossings through the Union Pacific Rail Road property that runs north/south through the City. Sprint does not currently serve any customers inside of the city limits from the existing facilities.

Section 20.02.290 of the Auburn City Code and Section 18 of Franchise Agreement No. FRN21-0003 provide that the franchise will not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

When the City granted Sprint's franchise, Sprint was owned by T-Mobile USA, Inc. The City received notice from Cogent Infrastructure, Inc (Cogent) that they were acquiring 100 percent of Sprint's assets and liability from T-Mobile, including the facilities and financial responsibility associated with Franchise Agreement No. FRN21-0003. In accordance with Auburn City Code 20.02.290 and Section 18 of Franchise Agreement No. FRN21-0003, Cogent has submitted the required transfer application, information, and written promise to unconditionally accept all terms and conditions of the Franchise Agreement. Sprint, now owned by Cogent, will continue to operate the existing fiber optic telecommunications facilities located in the public way under the current agreement.

A staff presentation was provided at the February 12, 2024 Study Session.

Ordinance No. 6932 transfers Franchise Agreement No. FRN21-0003 for Sprint Communications Company, L.P. a wholly owned subsidiary of T-Mobile to Sprint Communications Company, L.P. a wholly owned subsidiary of Cogent subject to the terms and conditions outlined in the Ordinance.

Reviewed by Council Committees:

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

Meeting Date: February 20, 2024

Item Number: ORD.D

ORDINANCE NO. 6932

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, TRANSFERRING A CITY TELECOMMUNICATIONS FRANCHISE FROM SPRINT COMMUNICATIONS COMPANY, L.P. (AS A T-MOBILE SUBSIDIARY) TO SPRINT COMMUNICATIONS COMPANY, L.P. (AS A COGENT SUBSIDIARY)

WHEREAS, by enacting Ordinance No. 6887, the City granted Sprint Communications Company, L.P. (Sprint) a telecommunications franchise under Franchise Agreement No. FRN21-0003 (Franchise). A copy of Ordinance No. 6887 is attached to this Ordinance as Exhibit 1. T-Mobile USA, Inc. (T-Mobile) owned all of Sprint's Franchise assets at the time of the City's Franchise approval; and

WHEREAS, after the City's Franchise approval, Cogent Infrastructure, Inc. (Cogent) purchased and acquired all of Sprint's Franchise assets from T-Mobile. Sprint will continue in existence and operation after this transaction as a Cogent subsidiary; and

WHEREAS, since it has acquired Sprint from T-Mobile, Cogent accordingly seeks to transfer the Franchise from Sprint (as a T-Mobile subsidiary) to Sprint (as a Cogent subsidiary). Because Cogent's acquisition of Sprint from T-Mobile changes Sprint's ownership, ACC 20.02.290.G and Section 18 of the Franchise require Cogent to obtain City consent to the Franchise transfer; and

WHEREAS, to obtain City consent, Cogent submitted the required City application and documentation supporting its transfer request. The City has reviewed Cogent's application and documentation, and has determined that it is sufficient to permit Cogent's intended Franchise transfer.

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

Section 1. Consent to Franchise Transfer. Subject to the terms and conditions in this Ordinance and in Ordinance No. 6887, Franchise Agreement No. FRN21-0003 (Franchise), the City consents to a transfer of the Franchise from Sprint Communications Company, L.P. (as a wholly owned T-Mobile USA, Inc. subsidiary) to Sprint Communications Company, L.P. (as a wholly owned Cogent Infrastructure, Inc. subsidiary).

Section 2. Conditions of Franchise Transfer. In addition to all other Franchise conditions, the transfer in this Ordinance is subject to the following:

- A. Cogent shall update Section 3 of the Franchise with its notice information (including its emergency contact information) with the City; and
- B. Cogent must submit payment of all outstanding Franchise transfer application fees required in the City Fee Schedule.

Cogent must complete these conditions within 30 days after the effective date of this Ordinance or the City's consent to the Franchise transfer in Section 1 of this Ordinance will be null and void.

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

Harry Boesche, Acting City Attorney

Published: _____

Exhibit 1

ORDINANCE NO. 6887

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO SPRINT COMMUNICATIONS COMPANY, L.P. A DELAWARE CORPORATION, A FRANCHISE FOR TELECOMMUNICATIONS.

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

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

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

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

Section 1. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated in this Agreement, the City grants to the Franchisee general permission to enter, use, and occupy the Franchise Area specified in Exhibit "A", attached hereto and incorporated by reference. Franchisee may locate the Franchisee's Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

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

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

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise

Area, for any purpose that does not interfere with Franchisee's rights under this Franchise.

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

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any public way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Franchisee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to Chapter 35.79.030 RCW, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

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

Section 2. Definitions

For the purpose of this agreement and enforcement thereof, definitions of words and phrases shall be in accordance with Auburn City Code 20.02.020. In addition, the following definitions apply:

A. "ACC" means the Auburn City Code.

B. "Franchise Area" means the public ways as specified in Exhibit "A". Franchise Area does not include private property located outside of the public way which the Franchisee may utilize, lease, or otherwise use for placement of Franchisee Facilities with authorization or other permissions from third parties, and including any necessary permits from any regulatory authority.

C. "Franchisee's Facilities" means fiber optic and broadband communications services constructed and operated within the Franchise Area including all cables, wires, conduits, ducts, pedestals, and any associated converter equipment or other items necessary for Telecommunications Services as defined in Chapter 35.99.010(7) RCW, that are located in the Franchise Area.

Franchisee's Facilities do not include facilities used to provide wireless services, including antennas or other equipment, appliances, attachments and

appurtenances associated with wireless telecommunications facilities. Franchisee's facilities do not include small wireless facilities, microcell, minor facility, or small cell facilities, as defined in Chapter 80.36.375 RCW. Franchisee's facilities do not include any facilities that are not located within the Franchise Area or that are covered under a separate Franchise Agreement or agreement.

D. "Franchisee's Services" means any telecommunications service, telecommunications capacity, or dark fiber, provided by the Franchisee using Franchisee's Facilities in the Franchise Area, including, but not limited to, the transmission of voice, data or other electronic information, or other subsequently developed technology that carries a signal over fiber optic cable. Franchisee's Services will also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the Franchise Area and other lawful services not prohibited by this Ordinance. However, Franchisee's Services will not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 3. Notice

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

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

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

Franchisee: Sprint Communications Company L.P.
Mailstop: KSOPHT0101-Z2040
6220 Sprint Parkway
Overland Park, KS 66251-2650
Attn: Manager, Wireline Real Estate
Telephone: 913-315-3229
Email: ROWRenewals@t-mobile.com

With a Copy to: Sprint Communications Company L.P. c/o T-Mobile
Attn: Managing Attorney, Real Estate
12920 SE 38th Street
Bellevue, Washington 98006

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

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency needs: 800-877-6627, Option 1, provided, however, that the use of such phone number shall not constitute notice pursuant to the term of this Agreement.

Section 4. Term of Agreement

A. This Franchise shall run for a period of five (5) years, from the date of Franchise Acceptance as described in Section 5 of this Agreement. Franchisee may apply for renewal of this Franchise for one additional five year term by filing a complete application not less than 180 days before expiration of this Franchise following the process specified under ACC 20.04 as it now exists or is amended.

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

C. Notwithstanding the above provisions, Franchisee may terminate this Franchise at any time with 180 days' written notice. Such termination requires removal of Franchisee's Facilities under ACC 20.02.220.

Section 5. Acceptance of Franchise

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

Acceptance". The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

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

Section 6. Construction and Maintenance

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

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

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

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

E. Tree Trimming. Upon prior written approval of the City the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the city.

Section 7. Trench Repair for Street Restorations.

A. At any time during the term of this Franchise, if a Franchisee Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify Franchisee of the deficiency and Franchisee agrees to

restore the deficiency and repair the damage within thirty (30) days of written notice by the City.

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

Section 8. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee's emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City's actual cost of performing emergency response work to the extent such emergency response work is required as a direct result of Franchisee's Facilities. Franchisee will reimburse the City for Franchisee's proportionate share of any direct and non-direct emergency response cost incurred by the City where the Franchisee's Facilities are determined by the City to be a contributing factor to such emergency response work.

Section 9. Damages to City and Third-Party Property

Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning the property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). All repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 10. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have

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

B. Franchisee will maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the public way, will develop guidelines and procedures for determining specific utility locations.

Section 11. Relocation of Franchisee Facilities

A. Except as otherwise so required by law, Franchisee agrees to relocate, remove, or reroute Franchisee's Facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Pursuant to the provisions of Section 15, Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the public way.

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

Section 12. Abandonment and or Removal of Franchisee Facilities

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

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

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

Section 13. Undergrounding

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

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

Section 14. Franchisee Information

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

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

Section 15. Indemnification and Hold Harmless

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise Agreement, except to the extent those claims, suits, action, liabilities, losses or damages are caused by the sole negligence or willful misconduct of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Franchisee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 15(A), the Franchisee will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

Section 16. Insurance

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

B. No Limitation. The Franchisee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

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

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

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

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise Agreement covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

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

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

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

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

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

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

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

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

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance for all alleged and actual negligence and intentional acts arising out of Franchisee operations as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

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

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

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

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

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

Section 17. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars (\$50,000.00) in the form of a performance bond running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, beyond all applicable notice and cure periods, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities Prior to City accessing the Performance Bond, it shall first give Franchisee written notice of its intention to do so and with that notice shall provide to Franchisee written documentation of the loss, damage or expense for which the City seeks compensation from the Performance Bond. Such notice and documentation shall be provided by City as soon as practicable as determined by the City, after the date of the occurrence which gives rise to City's claimed loss, damage or expense. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

A. All the provisions, conditions, regulations and requirements contained in this Franchise are binding upon the successors, assigns of, and independent contractors of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

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

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

Section 19. Dispute Resolution

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

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue

will be exclusively in King County, Washington. The prevailing party in any such action will be entitled to its attorneys' fees and costs.

Section 20. Enforcement and Remedies

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

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

Section 21. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. The Franchisee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The

amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Franchisee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee, if the Franchisee fails to comply with such amendment or modification.

Section 22. License, Tax and Other Charges

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

Section 23. Consequential Damages Limitation

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

Section 24. Severability

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

Section 25. Titles

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

Section 26. Implementation.

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

Section 27. Entire Agreement

This Agreement, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All

previous agreements between the parties pertaining to Franchisee's operation of Franchisee's Facilities are hereby superseded.

Section 28. Effective date.

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

INTRODUCED: NOV 07 2022
PASSED: NOV 07 2022
APPROVED: NOV 07 2022

Nancy Backus
NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell
Shawn Campbell, City Clerk
APPROVED AS TO FORM:

Kendra Comeau
Kendra Comeau, City Attorney

Published: November 10th, 2022 in The Seattle Times

EXHIBIT "A"

FRANCHISE AREA

Sprint fiber optic cable is located in the Union Pacific Railroad Road property that runs north/south through the City and occupies Five Hundred and Forty-Two (542) +/- linear feet of City public way through six east/west road crossings pursuant to City of Auburn, WA Public Works Department ROW Use Permit No. 87-02 issued September 15, 1987. The specific crossing locations that make up the Franchise Area are adjacent to the Union Pacific Rail line and are as follows:

1. Crossing at S 277th Street, 80 feet 4 inches.
2. Crossing S 285th Street (aka 44th Street NW), 110 feet 4 inches.
3. Crossing 37th Street NW, 90 feet 4 inches.
4. Crossing 29th Street NW, 30 feet.
5. Crossing West Main Street, 90 feet 4 inches.
6. Crossing 15th Street SW, 140 feet 4 inches.

EXHIBIT "B"

STATEMENT OF ACCEPTANCE

Sprint Communications Company L.P., for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

Franchisee Name: Sprint Communications Company L.P.
Address: 6200 Sprint Parkway; KSOPHD1010-Z2040
City, State, Zip: Overland Park, Kansas 66251

By: [Signature]
Name: Mike Simpson
Title: SVP and Chief Procurement Officer

Date: 11.29.22

DocuSigned by:
T-Mobile Legal Approval
Erin Howshar
Erin Howshar
Senior Corporate Counsel

STATE OF WA)
)ss.
COUNTY OF PIERCE)

On this 29th day of November, 2022, before me the undersigned, a Notary Public in and for the State of WA, duly commissioned and sworn, personally appeared, Mike Simpson of T-Mobile, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

[Signature]
Signature

Jim E. Baker

NOTARY PUBLIC in and for the State of WA, residing at 3255 160th Ave SE, Bellevue, WA

MY COMMISSION EXPIRES: 5/2/2023

