City Council Study Session Muni Services SFA
February 12, 2024 - 5:30 PM
City Hall Council Chambers
AGENDA
Watch the meeting LIVE!

Watch the meeting video
Meeting videos are not available until 72 hours after the meeting has concluded.

I. CALL TO ORDER

II. PUBLIC PARTICIPATION

A. Public Participation

The Auburn City Council Study Session Meeting scheduled for Monday, February 12, 2024 at 5:30 p.m. will be held in person and virtually.

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

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

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

Telephone: 253 205 0468
Toll Free: 877 853 5257
Zoom: https://us06web.zoom.us/j/83090347239

B. Roll Call

III. AGENDA MODIFICATIONS

IV. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Department Overview - Anti-Homelessness (Hay) (30 Minutes)

B. Overview of the Auburn Consolidated Resource Center (Hay) (15 Minutes)

C. REDI Report Out

D. Ordinance No. 6927 (Thomas) (10 Minutes)

An Ordinance establishing the Local Sales and Use Tax Rate for Local Revitalization Financing for 2024

E. Ordinance No. 6930 (Thomas) (10 Minutes)

An Ordinance amending Auburn City Code (ACC) Chapters 3.53, 3.54 and 3.62 related to the Administration of City Taxes

F. Ordinance No. 6929 (Gaub) (15 Minutes)

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

G. Ordinance No. 6932 (Gaub) (15 Minutes)

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)

H. Resolution No. 5753 (Tate) (10 Minutes)

A Resolution authorizing the duly appointed Administering Agency for the South King Housing and Homelessness Partners to execute all documents necessary to enter into agreements for the funding of Affordable Housing Projects, as recommended by the SKHHP Executive Board, utilizing funds contributed by the City to the SKHHP Housing Capital Fund

V. MUNICIPAL SERVICES DISCUSSION ITEMS

A. Auburn Teen Leadership Presentation (Hinman/Faber) (15 Minutes)

Presentations from Auburn Youth Council and Auburn Junior City Council

B. Municipal Court Update (Martinson) (20 Minutes)

VI. ADJOURNMENT

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

AGENDA BILL APPROVAL FORM

Agenda Subject:
Department Overview - Anti-Homelessness (Hay) (30 Minutes)

Date:
February 7, 2024

Department:
Anti-Homelessness

Attachments:
Department Overview - Anti-Homelessness Presentation

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

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember: Yolanda Trout-Manuel **Staff:** Kent Hay

Meeting Date: February 12, 2024 Item Number:

Overview of the Department of Anti-Homelessness

- February 12, 2024
- Kent Hay
- Director of Anti-Homelessness

AUBURN MORE THAN YOU IMAGINED

CITY OF AUBURN WASHINGTON

Our Philosophy

- Compassion
- Accountability
- Community

Who We Are

- Kent Hay – Director
- Drew Conley – Outreach Program Coordinator
- Patti Yates-Starns – Outreach Program Coordinator

What We Do

- Provide Direct Proactive Service Outreach
- Respond to City Departments
- Respond to Community Concerns
- Staff the Resource Center at Community Court
- Participation in Regional Efforts

Who We Serve

- Those experiencing homelessness
- Those on the brink of homelessness
- All city departments

What We've Achieved

- Housed 200+ People
- Cleaned Up Numerous Encampments
- Helped Set Up Community Court
- More than 20 Providers at Resource Center

CITY OF AUBURN WASHINGTON

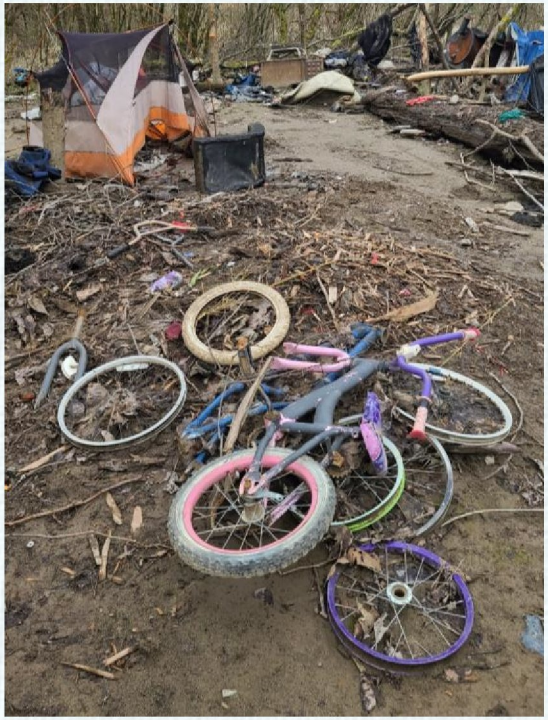
Encampment location

Encampment conditions pathways in to encampments

Encampment conditions accumulation of trash

Encampment conditions
Environmental degradation

Other photos



CITY OF AUBURN WASHINGTON

Questions

AGENDA BILL APPROVAL FORM

Agenda Subject:
Overview of the Auburn Consolidated Resource Center (Hay)
(15 Minutes)

Date:
February 6, 2024

Department:
Anti-Homelessness

Attachments:
Auburn Consolidated Resource Center

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

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember: Yolanda Trout-Manuel **Staff:** Kent Hay

Meeting Date: February 12, 2024 Item Number:

Auburn Consolidated Resource Center

- Ray of Hope Day Shelter and Sundown Night Shelter
- Resource Center in Auburn
- Community Court
- Neighborhood Center

Ray of Hope Day Shelter/Sundown Night Shelter

- 35-45 capacity nightly
- Average 60 people entering and leaving the day center daily
- 16 spaces Safe Parking
- Services

Resource Center in Auburn

- 1835 people serviced in 2023
- Agencies both in person and virtual
- Tangible and Meaningful Services

Community Court

- Partnership with King County
- Diversion Court

Neighborhood Center

- WeCare Daily Clinics
- Recovery Café Model
- Services/Resources

CITY OF AUBURN WASHINGTON

LAUNDROMAT
Auburn Way N
Hide imagery

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6927 (Thomas) (10 Minutes)

Date:
January 30, 2024

Department:
Finance

Attachments:
Ordinance No. 6927 LRF Sales Tax Credit

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

Administrative Recommendation:

For discussion only.

Background for Motion:

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 **Staff:** Jamie Thomas

Meeting Date: February 12, 2024 Item Number:

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: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Harry Boesche, Acting City Attorney

Published: _____

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6930 (Thomas) (10 Minutes)

Date:
February 7, 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:

For discussion only.

Background for Motion:

Background Summary:

Ordinance 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 ensures 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 12, 2024 Item Number:

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:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
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 ~~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.

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. 6929 (Gaub) (15 Minutes)

Date:
December 14, 2023

Department:
Public Works

Attachments:
Draft Ordinance No. 6929
Exhibit A
Exhibit B
Staff Report
Vicinity Map

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

Administrative Recommendation:

For discussion only.

Background for Motion:

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 outlined in draft Ordinance No. 6929.

A Public Hearing for ROW Vacation No. VAC23-0001 is set for February 20, 2024.

Reviewed by Council Committees:

Councilmember: Tracy Taylor **Staff:** Ingrid Gaub

Meeting Date: February 12, 2024 Item Number:

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 oblication 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 aboce 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, heairs, and assigns of all parties.

C. In accordance with RCW 35.79.030 the City grants a private utility easement to Comcast Cable Communitactions, 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, heairs, 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 suc removal, relocation, or sitting 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.

DRAFT

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:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Harry Boesche, Acting City Attorney

DRAFT

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.

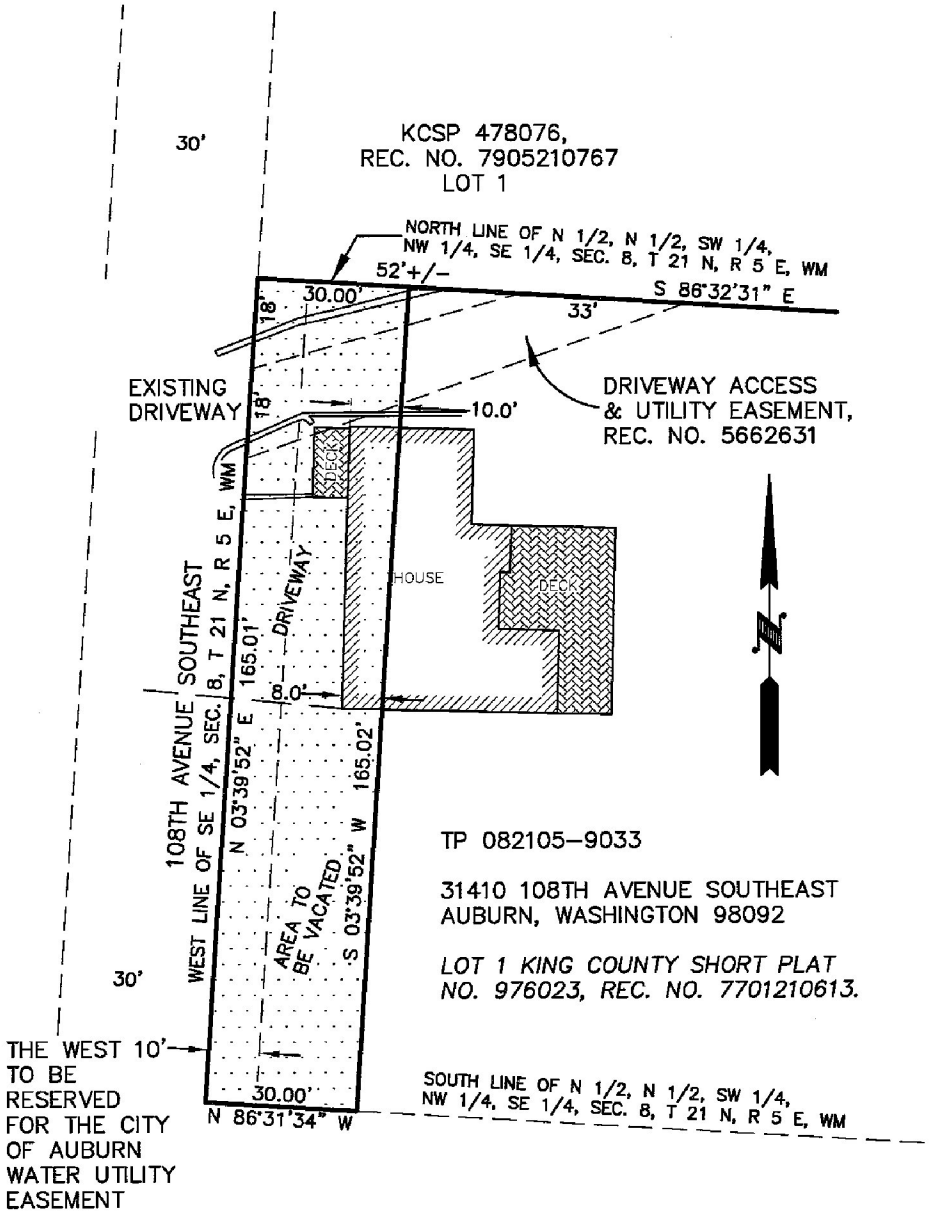
SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS AND UTILITIES UNDER KING COUNTY RECORDING NUMBER 5662631;

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

0' 30' 60' 90'

SCALE: 1"=30'

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

DALE E. OAKS
STATE OF WASHINGTON
19635
REGISTERED
PROFESSIONAL LAND SURVEYOR
11-9-23

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:

- 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.

VAC23-0001 - 108th Ave SE

Printed On: 12/5/2023

Map created by City of Auburn eGIS

0 200 400 ft

WGS84 Web Mercator (Auxiliary Sphere)

1: 2257

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. 6932 (Gaub) (15 Minutes)

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:

For discussion only.

Background for Motion:

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.

Ordinance No. 6932 is scheduled for consideration by Council at the February 20, 2024, City Council Meeting, and if approved, would transfer 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 12, 2024 Item Number:

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:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Harry Boesche, Acting City Attorney

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

DocuSign Envelope ID: 65337A95-E523-417F-968A-8249DA3419AD

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.

DocuSign Envelope ID: 65337A95-E523-417F-968A-8249DA3419AD

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: _____ Date: 11.29.22
Name: Mike Simpson
Title: SVP and Chief Procurement Officer

T-Mobile Legal Approval
DocuSigned by:
Erin Howshar
4EA59DEE9D71407...
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.

Jim E Baker
Signature

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

JIM E BAKER
Notary Public
State of Washington
Commission # 206994
My Comm. Expires May 2, 2023

MY COMMISSION EXPIRES: 5/2/2023

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5753 (Tate) (10 Minutes)

Date:
February 2, 2024

Department:
Community Development

Attachments:
Resolution 5753 RE 2023 SKHHP Capital Fund
SKHHP Executive Board Recommendation
Capital Fund Presentation

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

Administrative Recommendation:

For discussion only.

Background for Motion:

Background Summary:

SKHHP was established in 2019 through an interlocal agreement (Establishing ILA) to address the affordable housing challenges facing the subregion as a coordinated, unified, and collaborative coalition. SKHHP currently has 11 member jurisdictions including the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Maple Valley, Normandy Park, Renton, and Tukwila, plus King County.

In 2019, RCW 82.14.540 (SHB 1406) became law allowing jurisdictions to enact a local sales and use tax for the purpose of supporting affordable housing. In 2021, eight of the nine SKHHP member cities entered into a second interlocal agreement for purposes of pooling sales tax receipts authorized by RCW 82.14.540 with SKHHP to create the Housing Capital Fund (Pooling ILA – SHB 1406). In 2022, SKHHP awarded two projects in South King County almost $1.4 million during the first annual funding round.

In 2023, two of the four SKHHP member cities who are able to collect RCW 82.14.530 (HB 1590) revenues desired to pool a portion of those funds with SKHHP for the 2023 funding round of the Housing Capital Fund to add to existing SHB 1406 pooled revenue and entered into an additional interlocal agreement (Pooling ILA – HB 1590).

The Establishing ILA and Pooling ILAs established the SKHHP Housing Capital Fund, set parameters for the process for the selection of awards involving pooled funds, and determined the approval process. Pursuant to the ILAs, the SKHHP Executive Board recommends allocations for funding affordable housing projects to the participating City Councils. Even though the Council has already contributed funds to the 2023 Housing Capital Fund funding round, Council approval is needed to authorize the allocation of funds to specific projects.

The SKHHP Executive Board adopts annual funding guidelines and priorities for each funding round. The SKHHP Advisory Board subsequently reviewed applications and provided a funding recommendation based on adopted priorities to the SKHHP Executive Board. The SKHHP

Executive Board concurred with the majority of the SKHHP Advisory Board's recommendation and recommends funding four projects totaling $5,747,306 as described in the 2023 SKHHP Housing Capital Fund Recommendation memo dated January 17, 2024 (attached).

The SKHHP Executive Board requests approval to use $137,595 of the total $152,865 contributed funds from 2023 from the City of Auburn for the following recommended projects:

Project Sponsor and Project Name	Location	# of Units	Total Development Cost	Total SKHHP Contribution	Total City Contribution
Mercy Housing NW – Kent Multicultural Village	Kent	199	$134,323,456	$1,000,000	$0
LIHI – Skway Affordable Housing and Early Learning Center	Skyway	55	$36,295,892	$2,800,000	$0
TWG – Pandion at Star Lake	Kent	168	$87,149,708	$1,170,000	$0
Multi-Service Center – Victorian Place II	Des Moines	20	$785,125	$777,306	$137,595

As outlined in the attached memo, sales and use tax receipts from your jurisdiction have already been contributed to SKHHP's 2023 Housing Capital Fund, and with this Council approval of $137,595 those funds may be allocated to the projects recommended by the SKHHP Executive Board. Detailed descriptions of the projects, funding requests, rationale, and recommended conditions of funding for projects by the SKHHP Executive Board are included in the attached memo.

If not approved, SKHHP will not have Auburn's funds to contribute to the regional efforts to advance affordable housing projects that meet urgent local needs and priorities.

Staff recommends that City Council schedule Resolution 5753 for action during the February 20, 2024, City Council meeting.

Reviewed by Council Committees:

Councilmember: Yolanda Trout-Manuel **Staff:** Jeff Tate

Meeting Date: February 12, 2024 Item Number:

RESOLUTION NO. 5753

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE DULY-APPOINTED ADMINISTERING AGENCY FOR THE SOUTH KING HOUSING AND HOMELESSNESS PARTNERS TO EXECUTE ALL DOCUMENTS NECESSARY TO ENTER INTO AGREEMENTS FOR THE FUNDING OF AFFORDABLE HOUSING PROJECTS, AS RECOMMENDED BY THE SKHHP EXECUTIVE BOARD, UTILIZING FUNDS CONTRIBUTED BY THE CITY TO THE SKHHP HOUSING CAPITAL FUND

WHEREAS, on February 19, 2019 the City of Auburn enacted an interlocal agreement to form the South King Housing and Homelessness Partners (SKHHP) to help coordinate the efforts of South King County cities to provide affordable housing; and

WHEREAS, on February 22, 2021 the City of Auburn enacted an interlocal agreement for the purposes of pooling sales tax receipts with SKHHP to administer funds through the SKHHP Housing Capital Fund; and

WHEREAS, the SKHHP Executive Board has recommended that the City of Auburn participate in the funding of certain affordable housing projects and programs hereinafter described; and

WHEREAS, the SKHHP Executive Board has developed recommended conditions to ensure that the City's affordable housing funds are used for their intended purpose and that projects maintain their affordability over time; and

WHEREAS, pursuant to the SKHHP formation Interlocal Agreement, each legislative body participating in funding a project or program through SKHHP's Housing Capital Fund must authorize the application of a specific amount of the City funds contributed to the SKHHP Housing Capital Fund to a specific project or program; and

WHEREAS, the City Council desires to use $137,595 from funds contributed to the SKHHP Housing Capital Fund as designated below to finance the projects recommended by the SKHHP Executive Board.

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

Section 1. Pursuant to the Interlocal Agreement, the City Council authorizes the duly-appointed administering agency of SKHHP to execute all documents and take all necessary actions to enter into agreements on behalf of the City to fund the rehabilitation of the Multi-Service Center's Victorian Place II and to use $137,595 from the City's SHB 1406 contribution.

Section 2. The agreements entered into pursuant to Section 1 of this Resolution shall include terms and conditions to ensure that the City's funds are used for their intended purpose and that the projects maintain affordability over time. In determining what conditions should be included in the agreements, the duly-appointed administering agency of SKHHP shall be guided by the recommendations set forth in the SKHHP Executive Board's Memorandum dated January 17, 2024, a copy of which is attached as Exhibit A.

Section 3. This Resolution will take effect and be in full force on passage and signatures.

Dated and Signed: _____

CITY OF AUBURN

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Harry Boesche, Acting City Attorney

Memorandum

South King Housing and Homelessness Partners

TO: City of Auburn City Council
City of Burien City Council
City of Covington City Council
City of Des Moines City Council
City of Federal Way City Council
City of Kent City Council
City of Normandy Park City Council
City of Renton City Council
City of Tukwila City Council

FROM: SKHHP Executive Board

DATE: January 17, 2024

RE: 2023 SKHHP Housing Capital Fund Recommendation

OVERVIEW

The 2023 SKHHP Housing Capital Fund was the second funding round made possible by pooling resources among SKHHP member jurisdictions. 2023 was the first year members pooled funds sourced from HB 1590, which led to quadrupling the amount of funding available over the previous year totaling $5,899,297. SKHHP received six applications for funding representing over $8.6 million in requests to develop or preserve 493 units of housing. The SKHHP Executive Board concurred with the majority of the SKHHP Advisory Board's recommendation and recommends funding four projects totaling $5,747,306 (see Table 1). Of this total, the Executive Board recommends using $777,306 of the total $928,812 sourced from SHB 1406 revenue contributions for one preservation project; and $4,970,000 sourced from HB 1590 revenue contributions for three new construction projects. This recommendation leaves a balance of $151,506 in SHB 1406 funds and $485 in HB 1590 funds in the Housing Capital Fund that will rollover into the next funding round in 2024 (see Tables 2 and 3). A summary of the recommended projects, funding rationale, and the conditions for funding are described in this memo. Included as an attachment are the economic summaries of the recommended projects.

Table 1: Recommended Projects and Recommended Funding Level

Project Sponsor	Location	# of Units	Project type	Amount requested	Recommended Funding – HB 1590	Recommended Funding – SHB 1406
Mercy Housing NW	Kent	199	New Construction Rental	$1,000,000	$1,000,000	--
LIHI	Skyway	55	New Construction Rental	$2,800,000	$2,800,000	--
TWG	Kent	168	New Construction Rental	$2,856,000	$1,170,000	--
Multi-Service Center	Des Moines	20	Preservation Rental	$500,000	--	$777,306
TOTAL	--	**442**	--	--	**$4,970,000**	**$777,306**

Table 2: Proposed HB 1590 Allocations by Jurisdiction for Recommended Projects

Jurisdiction	1. Mercy Housing-KMV	2. LIHI-Skyway	3. TWG-Pandion	Total Contributed in 2023	Unallocated
Covington	$ 88,126	$ 246,752	$ 103,107	$ 438,028	$ 43
Kent	$ 911,874	$ 2,553,248	$ 1,066,893	$ 4,532,457	$ 442
Total	**$ 1,000,000**	**$ 2,800,000**	**$ 1,170,000**	**$ 4,970,485**	**$ 485**

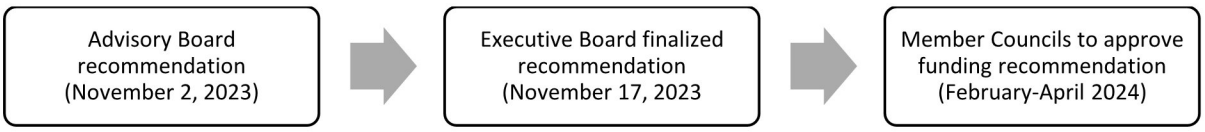
Table 3: Proposed SHB 1406 Allocations by Jurisdiction for Recommended Projects

Jurisdiction	4. MSC-Victorian Place II	Total Contributed in 2023	Carry-Over from 2022	Unallocated
Auburn	$ 137,595	$ 152,865	$ 11,548	$ 26,819
Burien	$ 63,128	$ 69,897	$ 5,535	$ 12,304
Des Moines	$ 30,261	$ 34,301	$ 1,858	$ 5,898
Federal Way	$ 119,468	$ 133,558	$ 9,196	$ 23,286
Kent	$ 188,422	$ 212,655	$ 12,493	$ 36,726
Normandy Park	$ 5,942	$ 6,992	$ 108	$ 1,158
Renton	$ 217,088	$ 246,643	$ 12,758	$ 42,313
Tukwila	$ 15,402	$ 17,233	$ 1,171	$ 3,002
Total	**$ 777,306**	**$ 874,145**	**$ 54,667**	**$ 151,506**

BACKGROUND

The SKHHP Advisory Board met on October 5, 2023 and November 2, 2023 to review project applications and develop a funding recommendation for the SKHHP Executive Board's consideration. The SKHHP Executive Board met on October 20, 2023 and November 17, 2023 to review each project and consider the recommendations of the Advisory Board. The Advisory Board adopted its recommendation on November 2, 2023 and the Executive Board took final action on November 17, 2023.

PROCESS



ATTACHMENTS

1. Economic summaires for recommended projects

1. **Mercy Housing NW - Kent Multicultural Village**

Funding request: $1,000,000

Executive Board recommendation: $1,000,000 (forgivable loan)

Address: 23446 Pacific Highway South, Kent, WA 98032

PROJECT SUMMARY

Kent Multicultural Village is a 199-unit multifamily rental project in Kent adjacent to the future Kent Des Moines Link light rail station. The light rail station is scheduled to open in 2026. The project will support households earning 30% area median income (AMI) to 80% AMI with a 20% set-aside (39 units) for households with an intellectual and/or developmental disability (I/DD). The I/DD units will benefit from on-site supportive services. A 30% set-aside (61 units) will be for families with children. The project includes studios, 1-bedrooms, 2-bedrooms, and three-bedroom units. The site is comprised of eight stories and will include a community center, a family resource center, and a licensed early learning facility with six classrooms to accommodate 96 infants and children with a focus on serving children with I/DD. The project was awarded the RFP by Sound Transit to be located on surplus land, but the terms of development are forthcoming, and the final project may be slightly different than described. 39 units are eligible for SKHHP funds sourced from HB 1590 revenue.

The project is a partnership between Mercy Housing NW and Open Doors for Multicultural Families, who will provide support to the I/DD households and will relocate their headquarters to the property. Open Doors for Multicultural Families will also operate the Community Center which will include space for recreational activities and community-focused programming. Open Doors for Multicultural Families is a non-profit organization dedicated to meeting the needs of persons of color living with I/DD, especially immigrants and refugees.

PROJECT SCHEDULE

Activity	Date
Site Control	2024 – to be coordinated in Sound Transit negotiations
Building Permits Issued	4/2025
Begin Construction	6/2025
Begin Lease Up	2/2027
Certificate of Occupancy Issued	6/2027
First LIHTC Year Start	6/2027
100% Lease Up	2/2028

FUNDING RATIONALE

The Executive Board supports the intent of this application for the following reasons:

- The project has a 20% set-aside for households with an I/DD.
- The project serves a diverse range of incomes from 30% AMI to 80% AMI.
- The project proposal is thorough, well planned, and has funding commitments already established.

- The project is located adjacent to the future Kent Des Moines Link light rail station and has convenient access to transit, schools, medical clinics, grocery stores, and services.
- The project strongly aligns with SKHHP Housing Capital Fund adopted priorities including: being a transit-oriented development (TOD) project, collaboration with local community-based organizations, addressing the needs of populations most disproportionately impacted by housing costs, advancing economic opportunity due to its proximity to the future Link light rail station and other amenities, advancing geographic equity of the Housing Capital Fund, and the leverage of private and public investment.
- Mercy Housing NW is a well-established nonprofit developer in the region.
- A third-party construction report found the proposed budget to be appropriate.

PROPOSED CONDITIONS

Standard Conditions

1. Contractor shall provide SKHHP with development and operating budgets based upon actual funding commitments for approval by SKHHP staff. Contractor must notify SKHHP staff immediately if it is unable to adhere to these budgets, and must submit new budget(s) to SKHHP staff for approval. SKHHP staff shall not unreasonably withhold its approval of these budget(s), so long as they do not materially or adversely change the Project. This shall be a continuing obligation of the Contractor. Contractor's failure to adhere to budgets (either original or new/amended) may result in SKHHP's withdrawal of its funding commitment. Contractor must prepare and submit final budgets to SKHHP at the time it starts project construction and at the project's completion.

2. Contractor shall submit to SKHHP evidence of funding commitments from all proposed public and private funding sources. If Contractor cannot secure an identified commitment within an application's time frame, Contractor shall immediately notify SKHHP staff and describe its anticipated actions and time frame for securing alternative funding.

3. Contractor shall use SKHHP provided funds toward specific project costs as included in the funding agreement and consistent with RCW 82.14.530. Contractor may not use SKHHP funds for any other purpose unless SKHHP staff authorizes such alternate use in writing. If budget line items with unexpended balances exist after completion of the project, SKHHP and other public funders shall approve adjustments to the project capital sources (including potential reductions in public fund loan balances).

4. Contractor shall evaluate and consider maximizing sustainability features for the Project (such as an efficient building envelope and heat pumps) and shall propose a plan to maximize the Project's sustainability.

5. If Contractor uses federal funds toward the Project, it must meet applicable federal guidelines, including but not limited to: contractor solicitation; bidding and selection; wage rates; and federal laws and regulations.

6. Contractor shall maintain documentation of any necessary land use approvals, permits, and licenses required by the jurisdiction in which the project is located.

7. Quarterly Status Reports. Contractor is required to provide SKHHP with quarterly status reports for projects funded through SKHHP's Housing Capital Fund during the project's development stage (from the time funds are awarded until the project's completion and occupancy). These quarterly reports must include at a minimum the status of funds expended and progress to date. SKHHP will rely on these quarterly reports to determine whether Contractor is making satisfactory progress on the project. Contractor shall submit a final budget to SKHHP upon project completion. If applicable, Contractor shall submit initial tenant information as required by SKHHP.

8. SKHHP will inspect the project site at least once during the project's construction.

9. Ongoing Monitoring. After occupancy, Contractor will submit annual reports to SKHHP summarizing the number of project beneficiaries, housing expenses for the target population, and the proportion of those beneficiaries that are low- and/or moderate-income and that meet other eligibility criteria established in the Contract. In addition, for projects with loan payments, Contractor must annually report financial information to SKHHP that it will use to assess contingent loan payments and project health. These annual reports will be required for the full duration of affordability. SKHHP will also periodically evaluate all projects for long term sustainability.

10. For rental projects, Contractor shall maintain the project in good and habitable condition for the duration of its affordability term.

11. SKHHP shall reimburse the Contractor for satisfactory completion of the requirements specified in the Contract and upon Contractor's submission to SKHHP of invoices and supporting documentation of eligible expenses.

12. A covenant is recorded ensuring affordability for at least 50 years, with unit size, number of units, and affordability distribution established prior to executing Contract.

Special Conditions

1. SKHHP will provide project funds to the Contractor in the form of a **deferred, contingent, forgivable loan**. Loan terms will account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by SKHHP staff. The loan will be secured by a deed of trust recorded against the development property to ensure that Contractor maintains the project's affordability and target population. Contractor shall not be required to repay the loan so long as it maintains these project requirements.

2. Timeframe for funding commitment. The funding commitment continues for **thirty-six (36) months** from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to SKHHP staff no later than sixty (60) days prior to the expiration date. At that time, the Agency will provide a

status report on progress to date and expected schedule for start of construction and project completion. The SKHHP Executive Board will consider a twelve-month extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the Contractor will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time.

3. At least 39 of the housing units shall be set-aside for households with an I/DD who earn no more than 60% AMI. Use of funds and population eligibility must be in-alignment with RCW 82.14.530.
4. SKHHP funds shall be used solely for new construction, unless otherwise approved by SKHHP staff.
5. Receipt of the documentation of remediation results and Department of Ecology approval of remediation efforts shall be submitted to SKHHP prior to proceeding with construction.

2. **Low Income Housing Institute (LIHI) - Skyway Affordable Housing and Early Learning Center**

Funding request: $2,800,000

Executive Board recommendation: $2,800,000 (forgivable loan)

Address: 12712-12724 & 12742 Renton Ave. South, Seattle, WA 98178

PROJECT SUMMARY

Skyway Affordable Housing and Early Learning Center is a multifamily rental project in Unincorporated King County. The project will provide 55 housing units for individuals and families, including 12 studios, 19 one-bedroom, 13 two-bedroom, and 11 three-bedroom units for households earning between 30% and 50% AMI with a 75% set-aside (42 units) for households transitioning out of homelessness. An early learning center will be located on the ground floor of the building, featuring four classrooms to accommodate up to 80 children, a parent resource room, and offices. The surrounding community will be prioritized in the early learning center activities. Additional amenities include a community room, case manager offices, and a roof deck for resident use. LIHI will provide on-site case management. This project has been previously awarded predevelopment and acquisition funds from King County.

The project will serve individuals (25 units) and families (17 units) exiting homelessness earning 30% AMI (42 total units) and will support general population households earning up to 50% AMI (12 units). A common room will support all residents (1 unit). 42 units are eligible for SKHHP funds sourced from HB 1590 revenue.

Childhaven, a nonprofit dedicated to strengthening families and preventing childhood trauma, plans to lease the early learning center and relocate their program to the site and will assist in applying for local funding for this portion of the project. The early learning center will be financed separately from the residential space, without using tax credits on the commercial space.

PROJECT SCHEDULE

Activity	Date
Site Control	1/30/2023
Building Permits Issued	1/23/2025
Begin Construction	6/1/2025
Begin Lease Up	9/15/2026
Certificate of Occupancy Issued	10/15/2026

FUNDING RATIONALE

The Executive Board supports the intent of this application for the following reasons:

- The project has a 75% set-aside for households transitioning out of homelessness.
- The project brings quality, affordable housing to a historically underserved neighborhood.
- The project will house Childhaven on-site to run an early learning center.
- The project is located near schools, a library, and a future community center.
- The project strongly aligns with SKHHP Housing Capital Fund adopted priorities including: collaboration with local community-based organizations, addressing the needs of populations

most disproportionately impacted by housing costs, advancing geographic equity of the Housing Capital Fund, leverage of private and public investment, and promoting racial equity by prioritizing residents with a connection to the neighborhood.

- The project will prioritize residents with a connection to the neighborhood.
- LIHI is an established developer in the region.
- A third-party construction report found the proposed budget to be appropriate.

PROPOSED CONDITIONS

Standard Conditions

1. Contractor shall provide SKHHP with development and operating budgets based upon actual funding commitments for approval by SKHHP staff. Contractor must notify SKHHP staff immediately if it is unable to adhere to these budgets, and must submit new budget(s) to SKHHP staff for approval. SKHHP staff shall not unreasonably withhold its approval of these budget(s), so long as they do not materially or adversely change the Project. This shall be a continuing obligation of the Contractor. Contractor's failure to adhere to budgets (either original or new/amended) may result in SKHHP's withdrawal of its funding commitment. Contractor must prepare and submit final budgets to SKHHP at the time it starts project construction and at the project's completion.

2. Contractor shall submit to SKHHP evidence of funding commitments from all proposed public and private funding sources. If Contractor cannot secure an identified commitment within an application's time frame, Contractor shall immediately notify SKHHP staff and describe its anticipated actions and time frame for securing alternative funding.

3. Contractor shall use SKHHP provided funds toward specific project costs as included in the funding agreement and consistent with RCW 82.14.530. Contractor may not use SKHHP funds for any other purpose unless SKHHP staff authorizes such alternate use in writing. If budget line items with unexpended balances exist after completion of the project, SKHHP and other public funders shall approve adjustments to the project capital sources (including potential reductions in public fund loan balances).

4. Contractor shall evaluate and consider maximizing sustainability features for the Project (such as an efficient building envelope and heat pumps) and shall propose a plan to maximize the Project's sustainability.

5. If Contractor uses federal funds toward the Project, it must meet applicable federal guidelines, including but not limited to: contractor solicitation; bidding and selection; wage rates; and federal laws and regulations.

6. Contractor shall maintain documentation of any necessary land use approvals, permits, and licenses required by the jurisdiction in which the project is located.

7. Quarterly Status Reports. Contractor is required to provide SKHHP with quarterly status reports for projects funded through SKHHP's Housing Capital Fund during the project's

development stage (from the time funds are awarded until the project's completion and occupancy). These quarterly reports must include at a minimum the status of funds expended and progress to date. SKHHP will rely on these quarterly reports to determine whether Contractor is making satisfactory progress on the project. Contractor shall submit a final budget to SKHHP upon project completion. If applicable, Contractor shall submit initial tenant information as required by SKHHP.

8. SKHHP will inspect the project site at least once during the project's construction.

9. Ongoing Monitoring. After occupancy, Contractor will submit annual reports to SKHHP summarizing the number of project beneficiaries, housing expenses for the target population, and the proportion of those beneficiaries that are low- and/or moderate-income and that meet other eligibility criteria established in the Contract. In addition, for projects with loan payments, Contractor must annually report financial information to SKHHP that it will use to assess contingent loan payments and project health. These annual reports will be required for the full duration of affordability. SKHHP will also periodically evaluate all projects for long term sustainability.

10. For rental projects, Contractor shall maintain the project in good and habitable condition for the duration of its affordability term.

11. SKHHP shall reimburse the Contractor for satisfactory completion of the requirements specified in the Contract and upon Contractor's submission to SKHHP of invoices and supporting documentation of eligible expenses.

12. A covenant is recorded ensuring affordability for at least 50 years, with unit size, number of units, and affordability distribution established prior to executing Contract.

Special Conditions

1. SKHHP will provide project funds to the Contractor in the form of a **deferred, contingent, forgivable loan**. Loan terms will account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by SKHHP staff. The loan will be secured by a deed of trust recorded against the development property to ensure that Contractor maintains the project's affordability and target population. Contractor shall not be required to repay the loan so long as it maintains these project requirements.

2. Timeframe for funding commitment. The funding commitment continues for **thirty-six (36) months** from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to SKHHP staff no later than sixty (60) days prior to the expiration date. At that time, the Agency will provide a status report on progress to date and expected schedule for start of construction and project completion. The SKHHP Executive Board will consider a twelve-month extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the Contractor will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time.

3. At least 75% of the housing units shall be set-aside for households transitioning out of homelessness and be for an eligible population defined in RCW 82.14.530 and who earn no more than 60% AMI.
4. SKHHP funds shall be used solely for new construction, unless otherwise approved by SKHHP staff.
5. LIHI shall reexamine the guest policy allowing only one guest at a time to determine if it is necessary.

3. TWG – Pandion at Star Lake

Funding request: $2,856,000

Executive Board recommendation: $1,170,000 (loan)

Address: 2526 S 272nd Street, Kent, WA 98059

PROJECT SUMMARY

The South Building (building one of two) of Pandion at Star Lake is a multifamily rental, mixed use project consisting of 168 affordable housing units for households earning between 30% and 60% AMI in Kent. The project is located adjacent to the Kent/Star Lake Link light rail station. This transit-oriented development (TOD) project will provide a mix of studio, one, two and three-bedroom units. The project will include ground floor commercial space consisting of an early learning center for low-income children and other non-profit tenants. The property was purchased by the developer in December 2022. The project is a seven-story building with six stories of affordable housing over one story of commercial space, plus basement level parking.

The 168 units includes 109 units for the general population, 30 units for families with children, 25 units for families with children that require permanent supportive services and who are transitioning out of homelessness or are at-risk of homelessness, and 4 units supporting households with an intellectual and/or developmental disability (I/DD) requiring supportive services.

Pandion at Star Lake is a partnership between TWG Development and Vision House, with Vision House providing on-site supportive serves for 140 units or those receiving 4% LIHTC support. In collaboration with the City of Kent, an additional service provider will be selected to serve residents of the remaining 28 units or those receiving 9% LIHTC support.

29 units of the project are eligible for HB 1590 funds which includes 25 units for families with children transitioning out of homelessness or are at-risk of homelessness and require permanent supportive services and the four units set-aside for I/DD households.

PROJECT SCHEDULE

Activity	Date
Site Control	12/6/2022
Building Permits Issued	10/1/2025
Begin Construction	12/31/2025
Certificate of Occupancy Issued	12/31/2027
Placed in service	1/1/2028
First LIHTC Year	2028

FUNDING RATIONALE

The Executive Board supports the intent of this application for the following reasons:

- The project is located adjacent to the future Kent/Star Lake Link light rail station and has convenient access to transit, schools, grocery stores, and services.

- The project strongly aligns with SKHHP Housing Capital Fund adopted priorities including: being a transit-oriented development (TOD) project, collaboration with local community-based organizations, addressing the needs of populations most disproportionately impacted by housing costs, advancing economic opportunity due to its proximity to the future Link light rail station and other amenities, advancing geographic equity of the Housing Capital Fund, and the leverage of private and public investment.
- The project construction start date is anticipated by early 2026, six months later than other recommended projects. The sponsor may have more time to secure the additional funds than other projects prior to beginning construction.
- The project has a strong partnership with Vision House who will provide on-site supportive services for 140 households.
- A second building supporting 173 units for seniors earning 80% to 100% AMI is part of the overall project, but is not part of the application to public funders. The overall project supports mixed-income housing from 30% AMI-100% AMI.
- The project sponsor has been in close communication with the City of Kent on project feasibility and zoning requirements since the property was purchased in December 2022.
- The project sponsor has agreed to voluntarily meet the design standards for properties zoned as 'Midway Transit Community,' which is a higher degree of development than what is required under general mixed-use commercial standards for the City of Kent.
- A third-party construction report found the proposed budget to be appropriate.

PROPOSED CONDITIONS

Standard Conditions

1. Contractor shall provide SKHHP with development and operating budgets based upon actual funding commitments for approval by SKHHP staff. Contractor must notify SKHHP staff immediately if it is unable to adhere to these budgets, and must submit new budget(s) to SKHHP staff for approval. SKHHP staff shall not unreasonably withhold its approval of these budget(s), so long as they do not materially or adversely change the Project. This shall be a continuing obligation of the Contractor. Contractor's failure to adhere to budgets (either original or new/amended) may result in SKHHP's withdrawal of its funding commitment. Contractor must prepare and submit final budgets to SKHHP at the time it starts project construction and at the project's completion.

2. Contractor shall submit to SKHHP evidence of funding commitments from all proposed public and private funding sources. If Contractor cannot secure an identified commitment within an application's time frame, Contractor shall immediately notify SKHHP staff and describe its anticipated actions and time frame for securing alternative funding.

3. Contractor shall use SKHHP provided funds toward specific project costs as included in the funding agreement and consistent with RCW 82.14.530. Contractor may not use SKHHP funds for any other purpose unless SKHHP staff authorizes such alternate use in writing. If budget line items with unexpended balances exist after completion of the

project, SKHHP and other public funders shall approve adjustments to the project capital sources (including potential reductions in public fund loan balances).

4. Contractor shall evaluate and consider maximizing sustainability features for the Project (such as an efficient building envelope and heat pumps) and shall propose a plan to maximize the Project's sustainability.

5. If Contractor uses federal funds toward the Project, it must meet applicable federal guidelines, including but not limited to: contractor solicitation; bidding and selection; wage rates; and federal laws and regulations.

6. Contractor shall maintain documentation of any necessary land use approvals, permits, and licenses required by the jurisdiction in which the project is located.

7. Quarterly Status Reports. Contractor is required to provide SKHHP with quarterly status reports for projects funded through SKHHP's Housing Capital Fund during the project's development stage (from the time funds are awarded until the project's completion and occupancy). These quarterly reports must include at a minimum the status of funds expended and progress to date. SKHHP will rely on these quarterly reports to determine whether Contractor is making satisfactory progress on the project. Contractor shall submit a final budget to SKHHP upon project completion. If applicable, Contractor shall submit initial tenant information as required by SKHHP.

8. SKHHP will inspect the project site at least once during the project's construction.

9. Ongoing Monitoring. After occupancy, Contractor will submit annual reports to SKHHP summarizing the number of project beneficiaries, housing expenses for the target population, and the proportion of those beneficiaries that are low- and/or moderate-income and that meet other eligibility criteria established in the Contract. In addition, for projects with loan payments, Contractor must annually report financial information to SKHHP that it will use to assess contingent loan payments and project health. These annual reports will be required for the full duration of affordability. SKHHP will also periodically evaluate all projects for long term sustainability.

10. For rental projects, Contractor shall maintain the project in good and habitable condition for the duration of its affordability term.

11. SKHHP shall reimburse the Contractor for satisfactory completion of the requirements specified in the Contract and upon Contractor's submission to SKHHP of invoices and supporting documentation of eligible expenses.

12. A covenant is recorded ensuring affordability for at least **50 years**, with unit size, number of units, and affordability distribution established prior to executing Contract.

Special Conditions

1. SKHHP will provide project funds to the Contractor in the form of a **deferred, 1% interest, non-forgivable loan to the LIHTC partnership**. The form of the funds are subject to change, but shall be agreed upon prior to contract execution. Loan terms will

account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by SKHHP staff. The loan will be secured by a deed of trust recorded against the development property to ensure that Contractor maintains the project's affordability and target population.

2. Timeframe for funding commitment. The funding commitment continues for **thirty-six (36) months** from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to SKHHP staff no later than sixty (60) days prior to the expiration date. At that time, the Agency will provide a status report on progress to date and expected schedule for start of construction and project completion. The SKHHP Executive Board will consider a twelve-month extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the Contractor will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time.

3. At least 29 housing units of the total shall be for an eligible population defined in RCW 82.14.530 including households transitioning out of homelessness or are at-risk of homelessness or households with an I/DD and who also earn no more than 60% AMI.

4. SKHHP funds shall be used solely for new construction of the South Building, unless otherwise approved by SKHHP staff.

4. **Multi-Service Center - Victorian Place II**

Funding request: $500,000

Executive Board recommendation: $777,306 (grant)

Address: 24517 26th Place South, Des Moines, WA 98198

PROJECT SUMMARY

Victorian Place II is a multifamily, preservation 20-unit rental project in Des Moines. Since 1996, the nonprofit Multi-Service Center has owned the two adjacent buildings that comprise the project which includes five units for households earning up to 35% AMI, ten units for households up to 40% AMI, and five units for households up to 50% AMI. The 20 three bedroom/two bath affordable rental units are in active use and the target population is families with children.

The original request was for $500,000 in the form of a grant. Initial estimates were based on a 2018 construction estimate. An updated cost estimate of the project received on October 25, 2023 totaled $675,918. The Advisory Board recommended fully funding the project at the revised amount, however, after the recommendation was made, it was discovered that the revised estimate did not include contingency funding. The Executive Board recommend funding the project with a 15% contingency which totals $777,306.

SKHHP funds are requested to support the rehabilitation of the two buildings including: landscape improvements, staircase repairs, installation of new railings, seal coating the parking lot, upgrading external lighting, recoating tenant decks, installation of new siding, replacing gutters and downspouts, replacing windows, replacing sliding glass doors, replacing unit entry doors, and replacing baseboard heating with energy-efficient heating systems.

PROJECT SCHEDULE

Activity	Date
Site Control	1/1/2000
Building Permit Issued	Mid-2024
Begin Rehabilitation and Renovation	Mid-late 2024
End Rehabilitation and Renovation	Mid-late 2025

FUNDING RATIONALE

The Advisory Board supports the intent of this application for the following reasons:

- There are limited funding sources available for preservation and rehabilitation. The focus for larger public funders has historically been on creating new units of affordable housing. Smaller preservation projects like this one are not as competitive against larger preservation projects competing for the same funds.
- The property is in need of rehabilitation to support the health and safety of residents which are families with children.
- Preservation of affordable housing is a high-priority for SKHHP.
- 75% of the households earn no more than 40% AMI.

- The project's proximity to the future Kent Des Moines Link light rail station an asset (1.3 miles).
- Multi-Service Center is a well-established South King County-based nonprofit that owns and operates over 650 units of affordable housing.
- Multi-Service Center's housing programs have a history of serving BIPOC community members with 72% of clients self-identifying as BIPOC.
- The project strongly aligns with SKHHP Housing Capital Fund adopted priorities including: the project sponsor's community connection and engagement with the populations they intend to serve, advancing racial equity, addressing the needs of populations most disproportionately impacted by housing costs, advancing geographic equity of the Housing Capital Fund, and preservation.
- Of the two applications submitted by the project sponsor, this project is the higher of the two priorities as the larger housing units are more difficult for families in need to access, and the current safety concerns at the project site are more immediate.

PROPOSED CONDITIONS

Standard Conditions

1. Contractor shall provide SKHHP with development and operating budgets based upon actual funding commitments for approval by SKHHP staff. Contractor must notify SKHHP staff immediately if it is unable to adhere to these budgets, and must submit new budget(s) to SKHHP staff for approval. SKHHP staff shall not unreasonably withhold its approval of these budget(s), so long as they do not materially or adversely change the Project. This shall be a continuing obligation of the Contractor. Contractor's failure to adhere to budgets (either original or new/amended) may result in SKHHP's withdrawal of its funding commitment. Contractor must prepare and submit final budgets to SKHHP at the time it starts project rehabilitation and at the project's completion.

2. Contractor shall submit to SKHHP evidence of funding commitments from all proposed public and private funding sources. If Contractor cannot secure an identified commitment within an application's time frame, Contractor shall immediately notify SKHHP staff and describe its anticipated actions and time frame for securing alternative funding.

3. Contractor shall use SKHHP provided funds toward specific project costs as included in the funding agreement and consistent with RCW 82.14.540. Contractor may not use SKHHP funds for any other purpose unless SKHHP staff authorizes such alternate use in writing. If budget line items with unexpended balances exist after completion of the project, SKHHP shall approve adjustments to the project capital sources (including potential reductions in public fund loan balances).

4. Contractor shall evaluate and consider maximizing sustainability features for the Project (such as an efficient building envelope and heat pumps) and shall propose a plan to maximize the Project's sustainability.

5. If Contractor uses federal funds toward the Project, it must meet applicable federal guidelines, including but not limited to: contractor solicitation; bidding and selection; wage rates; and federal laws and regulations.

6. Contractor shall maintain documentation of any necessary land use approvals, permits, and licenses required by the jurisdiction in which the project is located.

7. Quarterly Status Reports. Contractor is required to provide SKHHP with quarterly status reports for projects funded through SKHHP's Housing Capital Fund during the project's development stage (from the time funds are awarded until the project's completion). These quarterly reports must include at a minimum the status of funds expended and progress to date. SKHHP will rely on these quarterly reports to determine whether Contractor is making satisfactory progress on the project. Contractor shall submit a final budget to SKHHP upon project completion. If applicable, Contractor shall submit initial tenant information as required by SKHHP.

8. SKHHP will inspect the project site at least once during the project's rehabilitation.

9. Ongoing Monitoring. After occupancy, Contractor will submit annual reports to SKHHP summarizing the number of project beneficiaries, housing expenses for the target population, and the proportion of those beneficiaries that are low- and/or moderate-income and that meet other eligibility criteria established in the Contract. In addition, for projects with loan payments, Contractor must annually report financial information to SKHHP that it will use to assess contingent loan payments and project health. These annual reports will be required for the full duration of affordability. SKHHP will also periodically evaluate all projects for long term sustainability.

10. For rental projects, Contractor shall maintain the project in good and habitable condition for the duration of its affordability term.

11. SKHHP shall reimburse the Contractor for satisfactory completion of the requirements specified in the Contract and upon Contractor's submission to SKHHP of invoices and supporting documentation of eligible expenses.

12. A covenant is recorded ensuring affordability for at least 50 years, with unit size, number of units, and affordability distribution established prior to executing Contract.

Special Conditions

1. SKHHP will provide project funds to the Contractor in the form of a **secured grant with no repayment.** Final Contract terms shall be determined prior to release of funds and must be approved by SKHHP staff. The grant will be secured by a deed of trust recorded against the property to ensure that Contractor maintains the project's affordability and target population. Contractor shall not be required to repay the grant so long as it maintains these project requirements.

2. Timeframe for funding commitment. The funding commitment continues for **thirty-six (36) months** from the date of Council approval and shall expire thereafter if all

conditions are not satisfied. An extension may be requested to SKHHP staff no later than sixty (60) days prior to the expiration date. At that time, the Agency will provide a status report on progress to date and expected schedule for start of construction and project completion. The SKHHP Executive Board will consider a twelve-month extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the Contractor will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time.

3. SKHHP funds shall be used solely for the rehabilitation of the property to include, but not be limited to, the following, unless otherwise approved by SKHHP staff:
    a. landscape improvements
    b. staircase repairs
    c. installation of new railings
    d. seal coating the parking lot
    e. upgrading external lighting
    f. recoating tenant decks
    g. installation of new siding
    h. applying exterior paint
    i. replacing gutters and downspouts
    j. replacing windows
    k. replacing sliding glass doors
    l. replacing unit entry doors
    m. replacing baseboard heating with energy-efficient heating systems

4. SKHHP and Contractor shall agree to the specifics on what will be funded prior to executing a contract to ensure eligibility of expenses in alignment with RCW 82.14.540 and to mitigate cost-overruns.

5. Five housing units shall serve households earning up to 35% AMI, ten units for households up to 40% AMI, and five units for households up to 50% AMI for the duration of the term of affordability.

6. Should cost overruns occur that require funds above SKHHP's contribution, sponsor will work towards filling the funding need through their capital budget process or seeking funds through other sources.

ATTACHMENT 1: Economic Summaries of Recommended Projects

Project: Mercy Housing NW – Kent Multicultural Village

Proposed Funding Sources by Amounts and Status

Funding source	Proposed Amount	Status
SKHHP	$1,000,000	Applied
4% LIHTC Equity	$48,849,278	Applied
King County (2022)	$5,000,000	Committed
GP Equity	$1,000	Self-funded
Permanent Loan	$23,500,000	Applied
State HTF	$8,000,000	Awarded
Deferred Fee	$4,850,000	Self-funded
Amazon Grant	$2,000,000	Applied
Amazon Loan	$11,369,574	Applied
Private: Non-Residential	$7,841,869	Will Apply
State: Non-Residential	$10,735,000	Will Apply
Federal: Non-Residential	$2,552,000	Will Apply
County: Non-Residential	$3,150,000	Will Apply
Debt: Non-Residential	$5,474,735	Will Apply
TOTAL	$134,323,456	

Proposed Use of Funds and Total Residential Cost Per Unit

Proposed use	Amount	Per Unit
Land acquisition	$384,504	--
Construction costs	$98,698,553	--
Soft costs	$12,761,870	--
Development costs	$8,372,636	--
Other development costs	$4,002,261	--
Community facility	$9,402,356	--
4% bond issuance	$701,276	--
TOTAL	$134,323,456	--
TOTAL NON-RESIDENTIAL	$29,753,604	--
TOTAL RESIDENTIAL (Includes common areas)	$104,569,852	$525,476

Residential Cost Per Square Foot

Item	Amount
Residential square footage	246,019
Residential development cost	$104,569,852
Cost per square foot	$425.05

Residential Cost Per Unit Based on Unit Size

Unit Size	Number of Units	Unit Square Footage	Cost per Unit
Average Studio	54	392	$166,619
Average 1-bedroom	40	484	$205,724
Average 2-bedroom	65	710	$301,785
Average 3-bedroom	40	982	$417,399
Common area and other residential spaces, including parking	--	85,700	$36,426,785

Project: LIHI – Skyway Affordable Housing and Early Learning Center

Proposed Funding Sources by Amounts and Status

Funding source	Proposed Amount	Status
SKHHP	$2,800,000	Applied
State HTF	$7,465,748	Will apply in fall 2024
King County 2023	$2,500,000	Awarded $2.1M
9% LIHTC	$13,080,144	Will apply in fall 2024
King County 2022 (pre-development funds)	$2,500,000	Received
Direct Appropriations-Federal	$700,000	Received
Direct Appropriations-State	$3,000,000	Received
Wyncote Foundation	$1,000,000	Received
PSTAA	$300,000	Received
TOTAL	$36,295,892	

Proposed Use of Funds and Total Residential Cost Per Unit

Proposed use	Amount	Cost per Unit
Land acquisition	$2,041,000	--
Construction costs	$26,761,254	--
Soft costs	$4,624,073	--
Development costs	$1,737,565	--
Other development costs	$1,132,000	--
TOTAL	$36,295,892	--
TOTAL NON-RESIDENTIAL	$3,250,000	--
TOTAL RESIDENTIAL (Includes common areas)	$33,045,892	$600,834

Residential Cost Per Square Foot

Item	Amount
Residential square footage	50,608
Residential development cost	$33,045,892
Cost per square foot	$652.97

Residential Cost Per Unit Based on Unit Size

Unit Size	Number of Units	Unit Square Footage	Cost per Unit
Average studio square footage	12	400	$261,188
Average 1-bedroom square footage	19	516	$336,932
Average 2-bedroom square footage	13	816	$532,823
Average 3-bedroom square footage	11	900	587,673
Common area and other residential spaces, including parking	--	12,121	$7,914,649

Project: TWG – Pandion at Star Lake

Proposed Funding Sources by Amounts and Status

Funding source	Proposed Amount	Status
SKHHP	$2,856,000	Applied
LIHTC & Energy Credits	$31,023,163	Applied
Amazon	$22,000,000	Applied
Permanent Loan	$15,340,000	Applied
State HTF	$4,218,915	Applied-Not awarded in 2023
King County	$4,500,000	Applied-Not awarded in 2023
Deferred Development Fee	$2,355,370	Self-funded
Non-Residential Commercial	$4,856,260	--
TOTAL	$87,149,708	

Proposed Use of Funds and Total Residential Cost Per Unit

Proposed use	Amount	Per Unit
Land acquisition	$3,435,523	--
Construction costs	$63,626,629	--
Soft costs	$9,689,519	--
Development costs	$6,902,268	--
Other Development costs	$3,154,594	--
4% Bond Issuance	$341,175	--
TOTAL	$87,149,708	--
TOTAL NON-RESIDENTIAL	$4,856,260	--
TOTAL RESIDENTIAL (Includes common areas)	$82,293,448	$489,841

Residential Cost Per Square Foot

Item	Amount
Residential square footage	180,197
Residential development cost	$82,293,448
Cost per square foot	$456.68

Residential Cost Per Unit Based on Unit Size

Unit Size	Number of Units	Unit Square Footage	Cost per Unit
Average Studio	30	381	$173,995
Average 1-bedroom	78	615	$280,858
Average 2-bedroom	24	950	$433,846
Average 3-bedroom	36	1,095	$500,064
Common area and other residential spaces, including parking	--	59,772	$27,296,676

Project: Multi-Service Center - Victorian Place II

Proposed Funding Sources by Amounts and Status

Funding source	Proposed Amount	Status
SKHHP	$777,306	Applied
Multi-Service Center	$7,819	Self-Funded
TOTAL	$785,125	

Proposed Use of Funds and Total Residential Cost Per Unit

Proposed use	Amount	Per Unit
Title document recording fees	$5,000	$250
Rehabilitation costs	$780,125	$39,006
TOTAL	$785,125	$39,256

South King Housing and Homelessness Partners (SKHHP) Housing Capital Fund Recommendations

Claire V. Goodwin, SKHHP Executive Manager

City of Auburn City Council

February 12, 2024

SKHHP
South King Housing and Homelessness Partners

Establishing SKHHP and the Housing Capital Fund

- 2019: SKHHP was formed via an Interlocal Agreement
- Eleven member jurisdictions include:
  - Auburn
  - Burien
  - Covington
  - Des Moines
  - Federal Way
  - Kent
  - Maple Valley
  - Normandy Park
  - Renton
  - Tukwila
  - King County

- 2019: SHB 1406 (RCW 82.14.540) became law allowing jurisdictions to enact a local sales tax for the purpose of affordable housing; sales tax is a recapture of a portion of existing sales tax

- 2020: HB 1590 (RCW 82.14.530) became law allowing jurisdictions to impose a 0.1% local sales and use tax to support affordable housing; limited window to act before County collected revenue

- 2021 and 2023: Interlocal Agreements for the Purpose of Pooling Sales Tax Receipts with SKHHP

- 2022: Launched first funding round of the Housing Capital Fund

2023 Housing Capital Fund

- The second annual SKHHP Housing Capital Fund application opened in 2023.
- Six applications were received with broad geographic diversity throughout South King County.
- The SKHHP Advisory Board reviewed and made recommendations to the SKHHP Executive Board to fund four of the six projects.
- The SKHHP Executive Board agreed with most of the recommendation and is seeking concurrence from each jurisdiction.
- The recommendation totals $5,747,306
  - $777,306 from SHB 1406
  - $4,970,000 from HB 1590

SKHHP
South King Housing and Homelessness Partners

Recommended Projects

1. Mercy Housing NW – Kent Multicultural Village: Kent
   - 199-unit multifamily rental development adjacent to the future Kent Des Moines Link light rail station
   - 30%-80% of area median income (AMI); 20% set-aside for households with an I/DD and 30% set-aside for families
   - $1,000,000

2. LIHI – Skyway Affordable Housing and Early Learning Center: Unincorporated South King County
   - 55-unit multifamily rental development with on-site support services
   - 30%-50% AMI; 75% set-aside for households transitioning out of homelessness
   - $2,800,000

3. TWG – Pandion at Star Lake: Kent
   - 168-unit multifacility rental development adjacent to the future Kent/Star Lake Link light rail station
   - 30%-60% AMI; set-asides for families and families transitioning out of homelessness or are at-risk of homelessness
   - $1,170,000

4. Multi-Service Center – Victorian Place II: Des Moines
   - 20-unit rehabilitation and preservation project
   - 5 units up to 35% AMI; 10 units up to 40% AMI; 5 units up to 50% AMI
   - $777,306

Proposed Funding Sources for Recommended Projects – HB 1590

Jurisdiction	1. Mercy Housing-KMV	2. LIHI-Skyway	3. TWG-Pandion	Total Contributed in 2023	Unallocated
Covington	$ 88,126	$ 246,752	$ 103,107	$ 438,028	$ 43
Kent	$ 911,874	$ 2,553,248	$ 1,066,893	$ 4,532,457	$ 442
Total	**$ 1,000,000**	**$ 2,800,000**	**$ 1,170,000**	**$ 4,970,485**	**$ 485**

SKHHP
South King Housing and Homelessness Partners

Proposed Funding Sources for Recommended Projects – SHB 1406

Jurisdiction	4. MSC-Victorian Place II	Total Contributed in 2023	Carry-Over from 2022	Unallocated
Auburn	$ 137,595	$ 152,865	$ 11,548	$ 26,819
Burien	$ 63,128	$ 69,897	$ 5,535	$ 12,304
Des Moines	$ 30,261	$ 34,301	$ 1,858	$ 5,898
Federal Way	$ 119,468	$ 133,558	$ 9,196	$ 23,286
Kent	$ 188,422	$ 212,655	$ 12,493	$ 36,726
Normandy Park	$ 5,942	$ 6,992	$ 108	$ 1,158
Renton	$ 217,088	$ 246,643	$ 12,758	$ 42,313
Tukwila	$ 15,402	$ 17,233	$ 1,171	$ 3,002
Total	**$ 777,306**	**$ 874,145**	**$ 54,667**	**$ 151,506**

SKHHP
South King Housing and Homelessness Partners

Thank you

Claire V. Goodwin, SKHHP Executive Manager

cvgoodwin@skhhp.org

SKHHP
South King Housing and Homelessness Partners

AGENDA BILL APPROVAL FORM

Agenda Subject:
Auburn Teen Leadership Presentation (Hinman/Faber) (15 Minutes)

Date:
January 29, 2024

Department:
Administration/Parks

Attachments:
AYC - AJCC Council Presentation 2-12-24

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

Administrative Recommendation:

Background for Motion:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Staff: Dana Hinman & Daryl Faber

Meeting Date: February 12, 2024

Item Number:

City of Auburn Parks, Art & Recreation

AUBURN YOUTH COUNCIL

Teens Grades 6-12

What is AYC?

Auburn Youth Council (AYC) is a service learning & leadership development group that get teens active in the Auburn Community and to also serve as a liaison for the Teens in this community.

AYC currently has 8 active members. New members are required to fill out an application that is reviewed by the Advisor. Currently, all representatives are students from Mt. Baker Middle, Rainier Middle, Auburn & Riverside High school.

AYC Values

- Character
- Inclusion
- Kindness
- Support
- Empowerment

Benefits

01 Confidence

02 Decision Making

03 Learn more about yourself

04 Make an impact

05 Positive Peer Influence

Service Projects

Host a charity clothing drive for those in need. Teen Closet @ The REC

Participate in community clean-up to beautify Auburn (Clean Sweep).

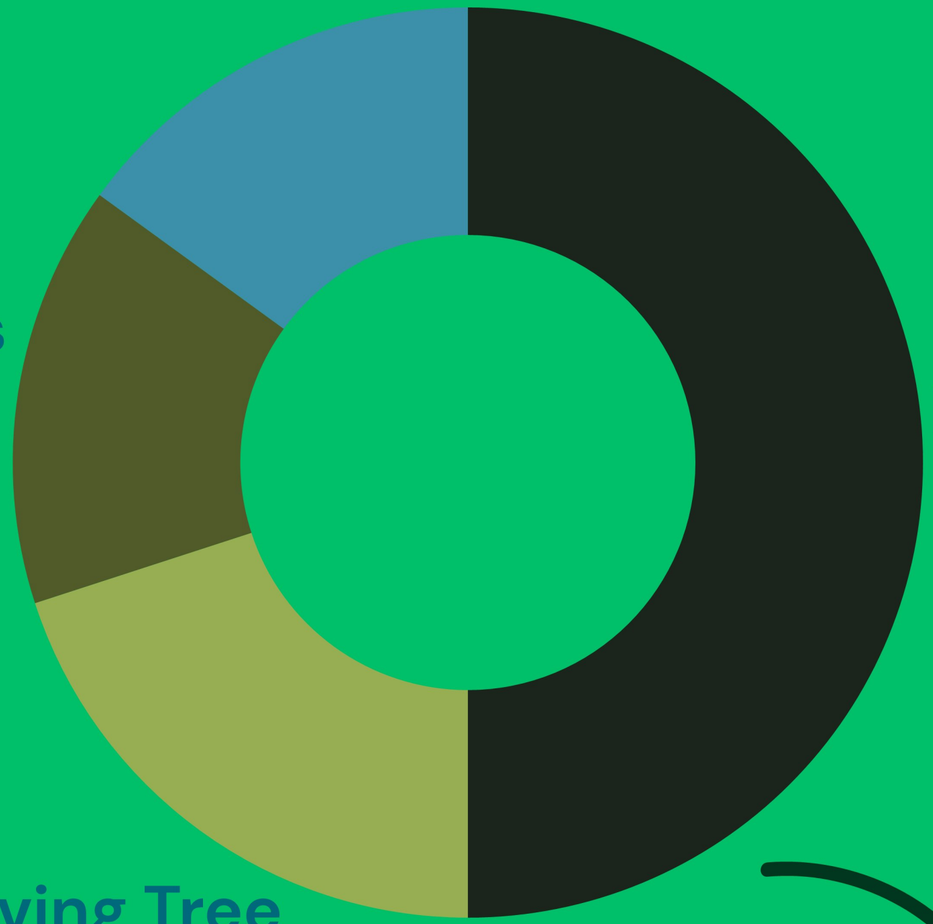
Host fundraisers for teen programs, local non-profits & general Teen support.

Participate in giving trees for teens & provide meals for families in need during the holidays.

Fundraising

*Averaged since 2021**

- Teen Snack Shack @ The REC ~$900/ annually
- Kid's Day ~$2,000
- Petpalooza ~$3,000



Future Projects

National Alliance on Mental Illness (NAMI)

Participate in Mental health awareness walk & fundraise for the cause

Connect with more local organizations

Teens feel empowered & have a voice in the community

Reading Programs at The Library

Promote reading for Teens & read to younger peers

Peer to Peer Mentorship Program

- **Positive peer influence**
- **Understand the importance of positive peers**

Auburn Junior City Council

Youth Voice in Local Government

History of the Auburn Junior City Council

2013 - present

The Auburn Junior City Council was created by ordinance in 2013. The first council was appointed on November 18, 2013

Sydney Campbell; Dalton Hands; Tyler Cushing; Mauricio Martinez-Torres; Olivia Thomas; Mary Riel (Anton Mahoney and Allison Hand not pictured)

Past Junior City Council Achievements

- Secured funding for 4 members and chaperone to attend the Youth Delegate Conference at National League of Cities in Washington, D.C.
- Learned the City of Auburn legislative process
- Partnered with the Auburn Youth Council on various projects and initiatives
- Lead a virtual town hall during the pandemic focused on youth mental health and equity
- Volunteered and appeared at numerous community events
- Service on the City of Auburn Transportation Advisory Board

2023-2024 Junior City Council

- Chair Emily Helms
- Vice Chair Khysner Ayo

Members

- Patricia Amadeo
- Savannah Lueck
- Lawand Muhsen
- Mikaela Pedraja
- Osiris Romero-Caldera

Questions for Auburn's young leaders?

AGENDA BILL APPROVAL FORM

Agenda Subject:
Municipal Court Update (Martinson) (20 Minutes)

Date:
February 7, 2024

Department:
Human Resources

Attachments:
Municipal Court Council Update
City Council Briefing Presentation
Municipal Court Study - Final Report

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

Administrative Recommendation:

For discussion only.

Background for Motion:

Background Summary:

Review with Council the July 2023 National Center for State Courts Council presentation and final report.

Reviewed by Council Committees:

Councilmember: Cheryl Rakes
Staff: Candis Martinson
Meeting Date: February 12, 2024
Item Number:

Human Resources

TEAM AUBURN

King County District Court (KCDC) Services

- Municipalities are statutorily responsible for providing the prosecution, indigent defense, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults within the City
  - Traffic and non-traffic misdemeanors
  - Traffic and non-traffic infractions
  - DUI
  - Parking
- Prior to 2012, the City operated the Auburn Municipal Court
- November 1, 2012, the City of Auburn entered into the KCDC Interlocal Agreement (ILA)
- KCDC processes and adjudicates cases for 13 municipalities, including Auburn

Role of HR & Risk Management

- District Court Contract Oversight:
  - Ensure compliance and efficient resource allocation
  - Collaborate with court personnel for effective operations
- Public Defense Management:
  - Procure and manage public defense contracts
  - Monitor performance and address issues promptly
- Legal Services Administration:
  - Implement and oversee public defense screening
  - Manage conflict attorneys' contracts

Role of HR & Risk Management – Con't.

- Alternative Sentencing Programs:
  - Supervise work crew programs (PW)
  - Collaborate on cost-effective court services
- Financial Oversight:
  - Reconcile budgets for court services
  - Identify and implement cost-saving measures
- Stakeholder Relations:
  - Foster positive day-to-day court relations
  - Collaborate with city stakeholders for alignment

Municipal Court Study – 2022/2023

- Project Preparation & Kick-Off Meeting / November 2022
- First Stage Review & Analysis / November – February 2023
- Site Visit / February 2023
- Comparative Practices in WA Municipal Courts / February – April 2023
- Assess Alternatives of Securing Court Services / February – May 2023
- Preliminary Report / June 2023
- On-Site Report Presentation / June 2023
- Final Report / July 2023

Stakeholder Interviews

- City of Auburn
  - Mayor, Police, Finance, Legal, Public Defense (contract), Office of Equity, SCORE Jail
- King County District Court
  - Presiding Judge, Auburn Judges, Therapeutic Court Manager, Court Administrator, Budget Director, KCDC Court Clerks
- Misalignment between COA stakeholders and KCDC stakeholders on strengths and challenges

Current Developments

- New KCDC Presiding Judge
- New COA Chief Prosecutor
- City of Covington Cases
- Court Calendaring
- Proposed Expansion of Community Court

Notice and Planning

- Authority for contract with National Center for State Courts (NCSC) for study on project planning and timeline
  - February/March 2024
- Notice requested from KCDC
  - Spring 2024
  - ILA requires notice by February 1, 2025, for termination effective December 31, 2026
    - Next opportunity – February 1, 2029, for termination effective December 31, 2030

Budget and Operations

- 2022 KCDC Annual Operating Cost - $1,289,534
- 2023 KCDC Year End Reconciliation – Summer, 2024
- 2024 Auburn Municipal Court (AMC) NCSC Planning Contract Cost – TBD
- 2025 AMC Start Up Costs – TBD
- 2026 AMC Start Up Costs - TBD
- 2027 AMC Estimated Annual Operating Costs - $3,121,085

Thank you!

AUBURN CITY COUNCIL BRIEFING

MAY 15, 2023

JOHN BELLO, PRINCIPAL COURT MANAGEMENT CONSULTANT

ABBY KUSCHEL, SENIOR COURT MANAGEMENT CONSULTANT

NCSC
National Center for State Courts

PROJECT OVERVIEW

Project Preparation & Kick-Off Meeting	November 2022
First Stage Review & Analysis	November – February 2023
Site Visit	February 2023
Comparative Practices in WA Municipal Courts	February – April 2023
Assess Alternatives of Securing Court Services	February – May 2023
Preliminary Report	June 2023
On-Site Report Presentation	June 2023
Final Report	July 2023

STAKEHOLDER INTERVIEWS

In-Person Interviews

- Conni Rhodes, KCDC Court Clerk
- Mark Caillier, Chief of Police, City of Auburn
- Sam Betz, Assistant Chief of Police, City of Auburn
- Jamie Thomas, Finance Director, City of Auburn
- Gloria Cody, Paralegal, City Attorney's Office
- Tricia Grove, Public Defender
- Robin Hartle, Legal Assistant, City Attorney's Office
- Nancy Backus, Mayor, City of Auburn
- Kendra Comeau, City Attorney, City of Auburn
- Harry Boesche, Deputy City Attorney, City of Auburn
- Megan Stockdale, Paralegal, City Attorney's Office
- Damita Beleford, Auburn Court Manager, KCDC
- Yanna Fillipidis, KCDC Operations Manager
- Rebecca Wood, Deputy City Clerk, City of Auburn
- Sara Anderson, Prosecutor, City of Auburn

Virtual Interviews

- Judge Matthew York, KCDC Presiding Judge
- Judge Leah Taguba, KCDC Judge (Auburn)
- Callista Welbaum, KCDC Therapeutic Courts Manager
- Devon Schrum, SCORE Jail Administrator
- Othniel Palomino, KCDC Court Administrator
- Heather Dean, Budget Director, KCDC
- Tina Gill, KCDC Deputy Court Administrator
- Clair Kintinar, Primary Conflict Attorney
- Brenda Goodson-Moore, Chief Equity and Inclusion Officer, City of Auburn

Strengths, challenges, and viewpoints outlined in the Debrief Presentation are the perspectives of those interviewed

Some were identified both as strengths and challenges by interviewees so may be listed in both areas

BRIEFING NOTES

- Judicial Philosophy/Courtroom Management
- Court Operations/Communications
- Financial
- Facilities
- Monthly Court & DCMRC Meetings
- Diversity, Equity & Inclusion
- Other

STRENGTHS

- Opportunity to have a variety of judges
- New judicial perspective every few years is good for defendants
- Independence with KCDC puts defendants at ease
- Good consistency among the judges, no "forum shopping"
- Attempt to appoint KCDC judges from South KC voting district
- Two strikes available so some control over judicial assignment
- Review judicial rotation annually
- Auburn is different than other areas of KC, so South KC judges are assigned that live in voting district
- Although each judge is different, results feel equitable

JUDICIAL PHILOSOPHY/COURTROOM MANAGEMENT

CHALLENGES

- Lack of consistency among judicial rulings and practices
- Judges not invested in Auburn
- High Failure to Appear rate – No reason to come to court
- The City, including the Mayor and prosecutors believe that defendants are not being held accountable by the court
- Conservative approach of former AMC judge was not popular among residents and City leadership due to cost, but liberal approach does not foster accountability and public safety
- If prosecution and defense have an agreement, often the judge rules independently
- Judges have control over procedures within their individual courtrooms and make these decisions independently without sufficient notice

JUDICIAL PHILOSOPHY/COURTROOM MANAGEMENT

STRENGTHS

- Excellent working relationship with the KCDC staff
- KCDC clerks and staff are hard working
- Public defense and prosecution have a good working relationship
- When procedural issues are brought to the monthly meetings, able to discuss and reach resolution
- Strong historical knowledge from previous Municipal Court 10+ years a
- Busy court and managed to not have to increase calendars
- Able to offer protection orders, name changes, small claims court, and Community Court through KCDC agreement

COURT OPERATIONS/COMMUNICATIONS

CHALLENGES

- Turnover of clerks and management staff is challenging
- No discussion about procedural changes, it just happens
- Lack of training for clerks causes errors and quality control issues
- High number of continuances on cases, high FTA rate
- Things are not running like they did 10-12 years ago
- Clerks send people to the City for things they can't help them with
- City of Auburn tends to be a jurisdiction with a lot of demands
- Ineffective use of time, defense not meeting with clients until they get to court
- Institutional memory from 10+ years ago is filtering into how they want court operations now, and court operations have changed

COURT OPERATIONS/COMMUNICATIONS

STRENGTHS

- Community Court costs are included with ILA
- Probation costs are included with ILA
- Only billed for judicial time spent on the bench with ILA
- City owned building so do not need to pay to rent court space

FINANCIAL

CHALLENGES

- City Finance Director does not review annual reconciliations
- Disparity in projections with Muckleshoot Tribe
- Lack of consistent process for collecting and tracking restitution
- Significant reduction in amount of court fines/fees collected
- Contract with KCDC more expensive but providing less services
- KCDC and Covington do not pay the City of Auburn for use of the building

FINANCIAL

STRENGTHS

- City of Auburn owns building
- The Court is in the same building as Police Department
- Challenging building but able to run an effective court despite that

FACILITIES

CHALLENGES

- Maintaining the building has been challenging
- KCDC and Covington do not pay to lease space
- Cramped workspace for staff affects morale
- Difficulty in getting building needs addressed (carpet, cleaning, rodents, paint)
- HVAC concerns
- Law enforcement would like a new building with more operational space

FACILITIES

STRENGTHS

- Monthly meetings are great, collaborative, and issues resolved
- Appreciate the monthly rotation of operations and Bench/Bar meetings
- When issues are brought forward, there is productive conversation and feels like there is resolution
- City representatives are bringing agenda items and concerns again, previously didn't say anything

MONTHLY COURTS & DCMRC MEETINGS

CHALLENGES

- City feels like they get talked over at meetings and told it is an Auburn issue
- Completely ineffective monthly meetings, no one listens and no resolution

MONTHLY COURTS & DCMRC MEETINGS

- Auburn demographics are different than other areas of KC
- Auburn is less affluent, liberal, and progressive
- High socioeconomic issues as many Auburn court customers utilize public defense services
- Much more diversity in Auburn than 10 years ago
- Many non-English speaking court customers
- Not aware of issues with access to the court for people of color
- There are issues with access to justice for people of color and socioeconomic issues but that is the norm in the country
- City and Courts do not collect data on race so there is no baseline to use for analysis and trends

DIVERSITY, EQUITY & INCLUSION VIEWPOINTS

- All spoke highly of the Community Court and its benefit to the community
- Judge York and Mayor Backus have a positive working relationship
- Auburn is rich in resources that benefit the community
- Probation services provided by KCDC are running smoothly
- SCORE jail facility has a wealth of services and positive working relationship with Auburn

- Positive working relationship between law enforcement and criminal justice stakeholders
- If the City would continue the ILA with KCDC, it would need to be more collaborative and sentencing practices would need to hold defendants more accountable
- KCDC values the opportunity to provide municipal court services to the City of Auburn and is interested in maintaining the ILA

OTHER

QUESTIONS?

- Clarifications
- Next Steps: Preliminary Report & Council Study Session Presentation
- Draft report overview to be presented on June 12th at the Study Session

Photo Credit: Auburn, WA City Hall | Photo by John Huguely for the Auburn Examiner

Municipal Court Study

City of Auburn, Washington

Prepared By:

National Center for State Courts
Court Consulting Services

June 2023

Acknowledgments

The National Center for State Courts (NCSC) Consulting Team gratefully acknowledges the City of Auburn for their assistance and leadership with this project. Throughout the project, we were fortunate to work with a distinguished group of dedicated individuals, particularly Candis Martinson, Director of Human Resources & Risk Management, and Mayor Nancy Backus along with other justice partners including the King County District Court, public defender and conflict attorney's office, SCORE jail, prosecutor's office, and various City of Auburn employees and staff.

National Center for State Courts
Contributing Staff:

John A. Bello
Project Director

Abby L. Kuschel
Senior Court Management Consultant

Mandy S. Allen
Court Management Consultant

John P. Doerner
Project Consultant

Executive Summary

According to the 2020 Census, the City of Auburn, Washington (City), a municipality located in King County and Pierce County, has 87,256 residents, representing a 24% increase from 2010. Auburn, like all Washington municipalities, statutorily bears responsibility for providing criminal justice services. These services include the prosecution, indigent defense, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults within the City. Washington municipalities may establish their own courts, including staffing and facilities, or may enter into contracts or interlocal agreements to provide these services. In 2012, the City disbanded its municipal court and contracted with the King County District Court (KCDC) to provide these services from the courthouse in Auburn.

For this project, the City seeks information and analysis regarding municipal court service options. The options evaluated included: 1) maintaining the current interlocal agreement with the KCDC, or 2) reestablishing the Auburn Municipal Court administered by the City. Several court governance-related issues such as recommended service levels, effects of justice outcomes and local control, impacts on associated services (law enforcement, probation, detention, City prosecution, indigent defense, South Correctional Entity (SCORE) jail, victim support, community restitution), costs and financial implications, transitional and ongoing operational issues of maintaining an Auburn Municipal Court, and projected effects on City residents and the community at large were analyzed and considered. Recommendations for optimizing KCDC services under the current, or future, interlocal agreement and alternative methods of delivery of services are also outlined in this report.

This Report was prepared for the City by the National Center for State Courts ("NCSC", "National Center", or "Center"). The NCSC is an independent, private, nonprofit corporation chartered in 1971, targeting the betterment of courts nationwide and around the world. This report addresses the issues raised by the City, includes data provided by KCDC and other organizations, and provides analysis of the competing options of continuing the ongoing relationship with KCDC or establishing a city-operated municipal court.

The points of view and opinions expressed in this report, are those of the NCSC Consulting Team members as agents of the National Center, and do not necessarily represent the official position or policies of the Washington Judicial Branch, the judges and staff of the King County District Court, the City of Auburn, or any component of the Washington Judiciary.

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1.0 INTRODUCTION & BACKGROUND

Auburn, Washington is a suburban city of approximately 87,256 residents and is in King County and Pierce County, southeast of Seattle. Prior to 2012, the City operated its own municipal court. As of November 1, 2012, the City-operated municipal court was disbanded. At that same time, Auburn municipal cases began to be processed and adjudicated by the KCDC under an interlocal agreement (ILA) with the City. In 2022, in addition to "state" cases and its own limited-jurisdiction caseload originating in the unincorporated areas of King County, the KCDC also processed and adjudicated cases for thirteen municipalities, including Auburn. The services for all these municipalities are governed by a common ILA, however, the types of services may vary among the cities. For example, some may receive probation services while others do not; some may also be required to pay for a pro-rata portion of facility costs when municipal cases are heard within a KCDC facility, others do not. With respect to Auburn, the KCDC operates within a city-owned court facility.

Washington municipalities statutorily bear responsibility for providing criminal justice services. These services include the prosecution, indigent defense, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults within the City. Washington municipalities may establish their own courts, including staffing and facilities, or may enter into contracts or ILAs to provide these services. The types of cases adjudicated in municipal courts include traffic and non-traffic misdemeanors, traffic and non-traffic infractions, DUI, and parking (RCW 3.50.020). In recent years, there has been an increasing level of discussion regarding dissatisfaction with the local justice system including the KCDC-operated municipal court. Reasons cited for dissatisfaction by criminal justice stakeholders and City officials include the value for cost of the current court operations, a perceived insufficient degree of accountability imposed by the Court for persons adjudicated guilty, and perceptions of inefficiency in operations attributed, in part, to frequent shifting of court managers and staff among the various KCDC locations.

As a result, the City is now considering the feasibility of reestablishing a city-operated municipal court and opting out of the ILA with KCDC. This report provides data and analysis designed to assist the City in making an informed decision on this issue.

Photo Credit: City of Auburn | *Auburn Justice Center*

1.1 Study Methodology

The NCSC consultants developed, and the City approved, a work plan as a part of their consulting agreement. The work plan included the tasks of:

- Reviewing and analyzing court data and documentation;
- Conducting a visit to Auburn to meet with KCDC judges and staff, City officials, and other key stakeholders;
- Reviewing practices and organizations in several comparable Washington municipal courts;
- Conducting a survey of identified stakeholders;[1]
- Assessing alternatives of securing municipal court services; and
- Preparing & presenting a report to the City.

2.0 FINDINGS & OBSERVATIONS

The City contracted with KCDC in 2012 to operate the municipal court for Auburn for several reasons. The financial cost to the City to operate a municipal court was prohibitive because defendants were sentenced to long jail terms, paid for by the City at a per-day rate. Further, there was a perception that the presiding judge at that time was too harsh, and it appeared that the court was not functioning in a manner that City leadership envisioned. The KCDC has been operating the court since 2012, and subsequent to the COVID pandemic, the City began to take a comprehensive look at the services being provided by KCDC and requested this study by the NCSC.

The NCSC was asked to review key questions to evaluate two municipal court service options including maintaining the ILA with KCDC and reestablishing a City-operated municipal court. The key questions centered around:

- The projected net cost of court operations and associated services, including costs charged by the SCORE jail and offsetting revenues;
- Recommended service levels (access, hours, online service, case processing time, convenience, etc.);
- Anticipated efficiencies related to justice outcomes and local control;
- Expected impacts on associated services (law enforcement, probation services, detention, City Prosecutor, indigent defense, SCORE jail, victim support, community restitution, etc.);
- Transitional and ongoing operational issues of maintaining an Auburn Municipal Court; and
- Projected impacts on City residents and the community at large.

[1] At the request of the City of Auburn, the survey was not conducted.

Court operations currently provided by KCDC, as specified in the ILA, include case processing and management, customer service, and probation services. These services are to be accomplished by KCDC staff consisting of judges, court clerks, supervisors, managers, and probation staff. The KCDC operates two courts from the Auburn location: Auburn and Covington, Washington.

The project kickoff meeting was held via Zoom on November 9, 2022. The purpose of the kickoff meeting was to introduce the NCSC Consulting Team to the City, obtain more information about the project, and set timelines and expectations going forward. From November 2022 through February 2023, the Consulting Team reviewed data provided by the City and conducted follow-up meetings with various City departments for clarification on some of the data and information.

The NCSC consultants traveled to Auburn, Washington, during the week of February 27, 2023. While onsite, the consultants interviewed various stakeholders from the City of Auburn, KCDC, the prosecutor's office, public defender and conflict attorney's offices, SCORE Jail, and law enforcement. The purpose of the interviews was to gain the perspective of each stakeholder group regarding the current municipal court operations, any areas where improvement of services could be realized, and to explore whether the current ILA could be renegotiated or should be terminated so that Auburn could reestablish a city-operated municipal court.

Challenges and strengths were highlighted during the interviews with stakeholders in the following areas: Judicial Philosophy/Courtroom Management, Court Operations/Communications, financial considerations, facilities, and Community Court. The NCSC Consulting Team identified several common areas of concern, although different reasoning was offered by various groups. The descriptions in sub-section 2.1 identify the areas of concern as stated by stakeholder groups and observed by the Consulting Team.

The City stakeholder groups included employees of the City of Auburn from the Mayor's office, the Legal Department, the Auburn Police Department, the Finance Department, Human Resources, the Chief Equity Officer, contracted public defense staff, and contracted conflict attorney staff (defense counsel).

The KCDC stakeholder groups included court clerks, court managers and administrators, the Presiding Judge of KCDC, an Auburn KCDC Judge, the Community Court Manager and the budget director. Most interviews were conducted in person; however, some interviews were conducted virtually following the Consulting Team's visit to Auburn.

2.1 Judicial Philosophy/Courtroom Management

2.1.1 City of Auburn Stakeholders

Key areas of focus raised by the various City stakeholders include:

- Appointment of judges and rotation of staff;
- Sentencing practices;
- Covington case priority; and
- Failure to Appear (FTA) rates;

A summary of each of these areas from the perspective of City stakeholders is outlined below.

Appointment of Judges and Rotation of Staff

This stakeholder group indicated that the frequent rotation of judges and staff impacts the development of policies and procedures and consistent adherence to those procedures that are in place in their respective offices. Policies and procedures of the court seem to change frequently and without any discussion with the various stakeholders. The prosecutors' recommended changes and reasoning is communicated to the court but is not generally addressed.

The perception of the City is that judges who do not reside in Auburn are not fully invested in the community, which then creates a laissez-faire attitude resulting in liberal sentences and allowance of high failure to appear rates.

Rotation of judges on a regular basis lowers the continuity of process in Auburn because policies, procedures, and judicial philosophies are always changing. This creates confusion and frustration experienced by stakeholders.

The rotation of clerks, supervisors, and management staff is also frequent and creates challenges for City stakeholders.

Sentencing Practices

The City expressed a desire for its residents to feel safe and to be safe. Sentencing practices do not appear to support a general message to defendants regarding accountability for one's actions, nor do they promote public safety.

Prior to the ILA, some City stakeholders believed that the sentencing practices by the municipal court judge were too harsh. Conversely, there is now a perception that criminal defendants sentenced by the judges of KCDC are not receiving sentences crafted to deter future criminal activity, punish, rehabilitate, or make victims whole. Anecdotally, the City has indicated that property crimes and violent crimes are increasing in Auburn.

The City would like to strike a balance between the overly harsh and the overly lenient. The City stakeholders asked Auburn judges to tour the SCORE jail facility in order to better understand the services defendants receive at that facility. The SCORE Jail Administrator explained to the NCSC Consulting Team that to receive meaningful treatment or services offered while in custody, a defendant would likely need to be incarcerated at SCORE for about eleven (11) days. This length of sentence may not always be recommended for offenses heard in municipal court.

Attorneys reported that often, when a plea agreement is negotiated with a defendant and then filed with the Court, the judges, without explanation, are inconsistent with respect to following sentencing recommendations contained within the plea agreement. It is unclear why this happens or how often it happens as no data was presented to substantiate this report, however, attorneys report that it is difficult to negotiate a plea agreement for the above reason.

The rotation of clerks, supervisors, and management staff is also frequent and creates challenges for City stakeholders.

Covington Case Priority

Some City stakeholders indicated that there are situations where an Auburn case is not heard because the court takes on a Covington case instead. No data was presented to help the NCSC project team understand the frequency of this practice, or the ultimate effect it has on case management of the Auburn caseload.

FTA Rates

There is a perception of high FTA rates. The NCSC project team attempted to obtain data from KCDC to verify this perception and was advised that the data was not available. The City stakeholders indicated that as defendants FTA for court, the judges do not routinely order the issuance of bench warrants for said FTAs, and if a warrant is issued, the bond is set too low for law enforcement to make an arrest. There was anecdotal data presented during interviews to suggest that, on one occurrence, a defendant failed to appear up to thirteen (13) times prior to a bench warrant being ordered and issued for the arrest of the defendant for failure to appear.

The prosecutor group reported a high FTA rate; as much as 95%. Again, while data was requested to substantiate the claim, the NCSC team was unable to determine the accurate FTA rate of the court. However, the prosecutor group reported that bench warrants for FTAs were not issued on a regular basis and that there is a general lack of desire from the bench to hold defendants accountable. There is a belief that defendants have no reason to come to court to face charges.

Prosecutors indicated that judges stop dockets to take up cases for defendants who appear late for court, continue cases multiple times in the interest of the defendant, and the "defendant will have to prove he won't come to court in order to get a higher bail."

2.1.2 King County District Court Stakeholders

Key areas of focus raised by the various KCDC stakeholders include:

- Sentencing practices;
- Appointment of judges and rotation of staff; and
- FTA rates

A summary of each of these areas from the perspective of KCDC stakeholders is outlined below.

Sentencing Practices

The KCDC indicated that the judges have similar judicial philosophies and are, therefore, consistent with sentencing, which eliminates the concept of "forum shopping." While there may be differences between the judges, the end results experienced appear to be equitable. KCDC understands that the City has a definite opinion about what they would like to see in terms of sentencing practices, however, it is important to remember that there is a separation of powers that must be maintained. The Court must remain neutral while balancing the terms of the current ILA.

Appointment of Judges and Rotation of Staff

Judges of the Auburn Court are appointed by the Presiding Judge of KCDC from the six (6) district court judges residing in south King County. The appointments are evaluated once per year, providing an opportunity to experience a variety of judges in the court. There is a process by which the City may offer a list of suitable judges for appointment and another process by which the City may exercise one strike against a proposed judge prior to appointment; however, the ability to strike is shared with the City of Covington. Generally, judges' rotations are two to three years in length. KCDC's perception is that the current rotation system assists in continuity of service and helps combat judicial fatigue.

KCDC maintains that the judges appointed for the Auburn Court are qualified jurists. A recent appointment was a prosecutor for fifteen (15) years prior to her appointment to the bench.

FTA Rates

This stakeholder group was asked about the reported high FTA rates and they indicated that the rates for Auburn were comparable for what is seen in other KCDCs. The stakeholders were not observing an uptick in FTAs. They further indicated that bench warrants for FTAs are commonly issued when appropriate. The stakeholders acknowledged a seemingly high FTA rate, but also acknowledged that Auburn, like many cities, is experiencing a high number of substance abuse and transient populations and these populations FTA frequently. When setting bail, judges indicated that bail laws are the least restrictive they have been. For repeat offenders, they are more likely to set a higher bail, but the others deserve the opportunity to appear in court voluntarily.

2.2 Court Operations/Communications

Court operations under the ILA include case processing and management, customer service, and probation services. These services are to be accomplished by KCDC staff consisting of judges, court clerks, supervisors, managers, and probation staff. The KCDC operates two courts from the Auburn location - Auburn and Covington, Washington.

Communication under the terms of the ILA include a monthly meeting of local Auburn stakeholders and a quarterly meeting of stakeholders from all cities included in the ILA. Both meetings include stakeholders from KCDC and are expected to be an information sharing opportunity for all stakeholders.

2.2.1 City of Auburn Stakeholders

Key areas of focus raised by the various City stakeholders include:

- High staff turnover at KCDC;
- Effective communication between the City and KCDC;
- Court calendaring; and
- Historical expectations of judicial partners.

A summary of each of these areas from the perspective of City stakeholders is outlined below.

High Staff Turnover at KCDC

It is perceived that there is a high staff turnover of KCDC staff, causing training and consistency issues. Many of the KCDC staff transfer from other jurisdictions which creates the expectation of fully-trained clerks transferring in. However, the new clerks are bringing procedures from the other locations with them rather than being fully trained on Auburn procedures.

City stakeholders indicated that there appears to be a lack of training for the KCSC staff assigned to Auburn, including the court clerks. Defendants who contact the clerk's office are often referred to the prosecutor's office and prosecutors may not speak directly with defendants. Orders, including protection orders, are not routinely served upon the parties and are slow to reach law enforcement, which then must enter them into the National Crime Information Center (NCIC). Additionally, when the court vacates an order, recalls a warrant, or recalls a protection order, it is slow to be entered into the system.

Managers often transfer in from other locations within KCDC. Like the clerks who transfer in, the managers are also bringing procedures with them rather than adopting Auburn procedures. The managers may make changes to local procedures without conveying the information to the City stakeholders.

Effective Communication Between the City and KCDC

The ILA contemplates regular meetings between KCDC and City stakeholders. One such group, called the "Court Facility Management Review Committee," (CFMRC), meets monthly about regular issues and attendees include KCDC staff, judges, Auburn City participants and contracted defense counsel. The other group, called the "District Court Management Review Committee," (DCMRC), meets quarterly and includes KCDC staff, judges, and City stakeholders from all the participating cities included in the ILA.

The City stakeholders reported that the monthly meetings are not held with the concept of a collaborative, problem-solving partnership between the City and KCDC staff, but instead, the KCDC staff informs the City of any changes, without any substantive discussion to gain insight into the perspectives of the various stakeholders, that are taking place.

The City stakeholders also reported that the quarterly meetings of the DCMRC are regarding the annual cost reconciliation process or informational about system-wide issues/changes and are not typically problem solving in nature. The City is one of many cities in attendance, many of which have no reservations with procedures because their caseloads are small enough that most issues don't affect them.

The NCSC Consulting Team requested copies of agendas and minutes from both committees. Copies of agendas were provided for the CFMRC, with one set of minutes. No agendas or minutes were provided for the DCMRC. The Consulting Team was unable to attend one of these meetings to observe the function or communication.

Upon review of the agenda items for the CFMRC meetings, it does appear that most items on the agendas are items from the Court and directed to City stakeholders. It doesn't appear that the City submitted items for meetings agendas to be discussed. Communication appears to be one way.

Without copies of agendas or minutes from the DCMRC, the NCSC Consulting Team must rely solely on anecdotal data. The perception of City stakeholders is that the DCMRC meetings do not present open opportunities to have issues heard, discussed, or resolved.

The defense bar reported that they have an excellent working relationship with KCDC and the staff at the Auburn facility.

Court Calendaring

The Court’s calendar was a concern raised by the City. The City and KCDC agreed that court calendars are to be sent to City partners at least three (3) days in advance of the docket by KCDC. City stakeholders indicated that the calendaring structures change monthly, copies of calendars are not provided to stakeholders in a timely manner, and changes are made without notice. Several City stakeholders expressed frustration that the agreed upon practice is not occurring consistently. This inhibits the prosecution and defense’s ability to properly prepare for court, interferes with victim notification, and provides a general misunderstanding of the Court’s calendar.

Historical Expectations of Judicial Partners

Several members of the City stakeholder group were employed by the former Auburn Municipal Court prior to 2012 and tend to compare today's court operations to those of court operations more than ten years ago. This group also has expectations that operations should be the same as those ten years ago, although the structure of courts and court systems has changed drastically over the past ten years. These historical expectations are impacting the relationship between the City and KCDC Court.

2.2.2 King County District Court Stakeholders

Key areas of focus raised by the various KCDC stakeholders include:

- High staff turnover at KCDC;
- Effective communication between the City and KCDC; and
- Court calendaring.

A summary of each of these areas from the perspective of City stakeholders is outlined below.

High Staff Turnover at KCDC

KCDC staff are hard working. The court is very busy and, because of the hard work of the judges and staff, they have avoided the need to increase the number of calendars set.

Facility needs will be discussed further in this report, however, KCDC stakeholders reported that cramped facilities, the appearance of rodents, HVAC concerns and busy dockets have all contributed to low morale among the court staff. Other clerks in King County looked forward to transferring to the Auburn Municipal Court because the cost of living is lower, however, low morale seems to counter that benefit. Auburn sees the most use of leave under the Family Medical Leave Act and general absenteeism.

Effective Communication Between the City and KCDC

The KCDC indicated that during the monthly and quarterly meetings held, any procedural issues brought to the meetings are addressed and resolution is reached. A judge indicated that she believed the monthly meetings are productive because she can talk through issues that everyone is experiencing and hear the perspectives of all stakeholders. She acknowledges that there are some occasions when communication is difficult, but more because of the separation of powers, which needs to be maintained, than lack of interest in the process.

There is a perception that the Court receives unnecessary telephone calls from the City. Most questions raised by the City can be answered by viewing the case in the case management system. Clerks distribute all orders, albeit, if someone is absent, coverage doesn't allow for everything to get done in the same day. During periods of short-staffing, frequent telephone calls from the prosecutor's office interfere with the daily duties of the clerks.

The Presiding Judge reported that he and the Mayor have a good working relationship and are able to speak about issues affecting the court. They were all able to work together during the pandemic to keep things running as smoothly as possible.

There was some concern that the court-appointed defense bar may be somewhat reluctant to raise concerns with the City because they contract directly with the City. Because of the drive for harsher sentences and because of the fear of retaliation, there was perception that the court-appointed defense bar may not be providing full representation to their clients.

Court Calendaring

Court calendars are sent to City partners at least three (3) days in advance of the docket. This allows the prosecution and defense to properly prepare for court. Sending calendars more than three days prior to court would not allow calendar changes such as new cases being added to the docket, requests for continuances, etc. to appear on the calendar. KCDC also indicated that when calendars change from one day of the week to another, from morning to afternoon, or vice versa, there is communication between the Court and the City.

In addition to municipal court services provided to cities of Auburn and Covington, KCDC offers small claims, name changes, and protection order dockets at the Auburn facility through the ILA, which are typically only offered at District Court facilities. Fines can be paid at the Auburn facility for any type of KCDC case. Offering small claims, name changes, and protection order dockets in Auburn is a benefit to Auburn residents. The prosecutor may not have to attend all of these dockets and it is possible that the City does not have a full picture of the number of calendars being held at the Auburn location.

2.3 Financial Considerations

2.3.1 City of Auburn and King County District Court Stakeholder

Strengths

- The ILA includes the community court, probation costs, and the City is only billed for judicial time spent on the bench.
- The building is owned by the City, so rent is not charged to the City.
- KCDC provides additional services to Auburn residents at no cost:

  Small claims, protection orders, name changes, and a fine payment location.

Challenges

- There is not an established process for tracking and collecting restitution for applicable cases with the City Finance Department.
- The City has seen a significant reduction in the amount of fines/fees/costs collected by KCDC.
- The ILA is expensive, the services provided are becoming less, and fewer cases are being filed.
- Covington and KCDC don't pay the City for use of City facilities.

Additional financial analysis is included later in the report.

2.4 Facilities Considerations

2.4.1 City of Auburn Stakeholders

The building used for court operations is owned by the City. Included in the building is the courts' space, a small section for probation, and one office for the prosecutor. The southern portion and lower level are fully occupied by the Auburn Police Department.

Some City stakeholders would like to see the Police Department and the court in separate facilities. There is a perception that because the Police Department and the courts are in the same building, they are one agency. In addition to the undesirable logistical challenges, each department is cramped and needs additional space.

KCDC offers limited civil court-related activities at the building and performs the work for the Covington Municipal Court. Neither of these entities pay rent to the City.

2.4.2 King County District Court Stakeholders

The building has several maintenance issues including rodent intrusion, paint and carpets need replacing, and there are concerns with the HVAC system. The KCDC relies on the City to perform the regular maintenance of the building.

The space for KCDC clerk's has been fitted with tall partition cubicles for individual privacy, creating an overcrowded maze in the office.

2.5 Community Court

Community Court is a collaborative effort of both stakeholder groups, offering extensive resources for the homeless and individuals with substance use disorders and mental health issues. The community has come together to provide significant resources for participants of Community Court. This collaboration between the City and KCDC has contributed to the success of the Community Court.

Photo Credit: The Verge | Downtown Auburn Gate

City stakeholders believe that the Community Court, operated in collaboration with KCDC, is a valuable part of the justice system in Auburn. Services for Community Court participants are plentiful. However, there is anecdotal evidence that some defendants opt out of Community Court because the sentence they would receive outside of Community Court is less than what they would receive on a violation in Community Court.

There is a perception that people from other communities are utilizing services provided in Auburn because they are so rich in resources. While it is helpful that Auburn can serve other residents from outside of Auburn, the City would like to be ensured that primarily Auburn residents are receiving services and utilizing the resources offered for financial considerations.

Currently, KCDC finds it very beneficial that a designated City staff member for Community Court is available when issues arise. The Mayor is very supportive of the community court, there are excellent attorneys participating in the program, and grant money and resources are available. KCDC reports that they have support of some of the local businesses in Auburn and have been piloting a restorative justice program.

KCDC indicates that the challenges include some reluctance with participation from the City at times (consistency with prosecutors) and data challenges and availability for funders.

2.6 Diversity, Equity, and Inclusion (DEI)

During the stakeholder interviews, each stakeholder was asked about DEI within the Auburn Court. The stakeholders indicated that they were unaware of barriers to access to justice experienced by people of color or socioeconomic issues, but suspect there are some present because that is being displayed throughout the country. Neither the Court nor the City collect demographic data on race so there is no baseline data to analyze for this purpose.

Photo Credit: Adobe Stock

Stakeholders described Auburn as having a different demographic than most areas of King County. Auburn is less affluent, liberal, and progressive, and, because of high socioeconomic issues, many of the court users of the Auburn Court utilize public defense services. There are many non-English speaking court participants and diversity has been increasing over the past ten years.

The City has always had a diversity program, but not specific to the court. Currently, they employ a Chief Equity Officer. This position is tasked with working with all three (3) branches of government on DEI issues on a regular basis. Because the position is new and growing, the Chief Equity Officer is in the process of developing action plans and resources available to the City.

In reviewing whether a change from the ILA with KCDC to a city-operated municipal court, it is unlikely that there would be a negative effect on DEI. In fact, with a change to a city-operated court, direct use of the City's Chief Equity Officer could be employed to ensure that the City is incorporating DEI in their work. If the City chooses to remain with KCDC, it is recommended that any future contract include a copy of the King County DEI provisions and standards and a provision requiring the inclusion of the City's Chief Equity Officer in decisions affecting people of color, gender, age, sexual orientation, disability, socioeconomic status, and religious beliefs to ensure proper inclusion and equity.

2.7 Other Stakeholders Interviewed

In addition to the City of Auburn and KCDC stakeholders, the NCSC Consulting Team interviewed stakeholder representatives from justice partners of the Auburn Court.

The project team met with the SCORE Jail Administrator to better understand the operations of SCORE and the collaboration between their facility, the City, and KCDC. The City is considered an "owner agency" with SCORE through an ILA that also include several other communities.[2]

Photo credit: Score Jail Facility

The SCORE Jail Administrator expressed the desire to continue positive working relationships with the City and KCDC, and considers each to be a valuable justice partner. The SCORE Administrator implements solutions to problems experienced by inmates at her facility. For example, to accommodate some non-appearance issues by incarcerated defendants, SCORE developed a system whereby the defendant would have access to an iPad to attend court from their cell. This solution may reduce the number of times a defendant will FTA for court because they cannot get them out of the cell for court.

The NCSC Consulting Team also met with law enforcement. There is a positive working relationship between the law enforcement agencies and all justice partners. The Auburn Police Department expressed the need for additional space and for standardized procedures within the court.

Two contract defense attorneys were interviewed as part of this project. One attorney expressed an overall positive opinion of the current operation of the Auburn Court. The judicial officers, court clerks, probation staff, law enforcement and personnel from SCORE were said to be operating in a manner which promotes justice. There is a general perception that the City and the KCDC are not communicating effectively. The second attorney indicated that a change in judges creates some unpredictability in sentencing. FTA rates appear to be high and notes that, in Auburn, the judges issue a warrant and, in other communities, another summons is issued upon FTA. The general courtroom process takes more time than it should and reasoned that it could be due to the slowness of the case management system.

Upon request of the City, the NCSC Consulting Team met with other municipal courts and reviewed public data of four such courts. These courts are operated by their respective cities and do not have an ILA with the KCDC. This information will be discussed more fully in section 3.0, Alternative Options.

[2] The South Correctional Entity (SCORE Jail) is a government agency pursuant to RCW 39.34.030(3) and located in Des Moines, Washington. SCORE is owned by the Cities of: Auburn, Burien, Des Moines, Renton, SeaTac, and Tukwila. South Correctional Entity (scorejail.org)

2.8 Conclusions From Interviews with Stakeholders

The NCSC Consulting Team heard several strengths and challenges with the current ILA, with each stakeholder group expressing opposing views based on their perceptions. The views expressed by each stakeholder group were on opposite ends of the spectrum. The City expressed complete dissatisfaction with the current arrangement and KCDC expressed a level of confidence in the current operations of the Auburn Court. As outlined in the report, very little data was received from either side to analyze claims of high FTA rates, efficient caseflow management, disparities in sentencing, and other complaints. Most of the information gathered by the NCSC Consulting Team from stakeholders was anecdotal.

The anecdotal data provided during the interviews appear to verify a dissatisfaction in the court operations provided by the KCDC and the NCSC sets out to compare the options available to the City of Auburn. The City requested analysis of costs and resources necessary to have a city-operated municipal court, and an analysis of what remediations would be required to continue with the ILA with KCDC.

The NCSC Consulting Team has analyzed both options available and submits the following alternative options for consideration.

3.0 ALTERNATIVE OPTIONS

The NCSC Consulting Team analyzed the alternative options of establishing a city-operated municipal court, and negotiating potential revisions to the KCDC common ILA that may ameliorate some of the City's concerns. This section provides the consulting team's analysis of these alternatives.

3.1 Establish a municipal court operated by the City of Auburn

Discussions with City officials helped to identify four municipalities that currently have city-operated municipal courts. These municipalities were: Federal Way, Kent, Puyallup, and Renton. The NCSC Consulting Team contacted the court administrators in each of these municipalities to obtain caseload, staffing, and financial information that could be used to estimate the organizational requirements and financial cost of establishing a city-operated court in Auburn.

If the City makes the decision to terminate their agreement with KCDC and the current ILA and reestablish a city-operated municipal court, Auburn will lose the ability to provide small claims court, protection orders, and name changes to Auburn residents at the Auburn Municipal Court. Residents would need to go to a District Court location for these matters.

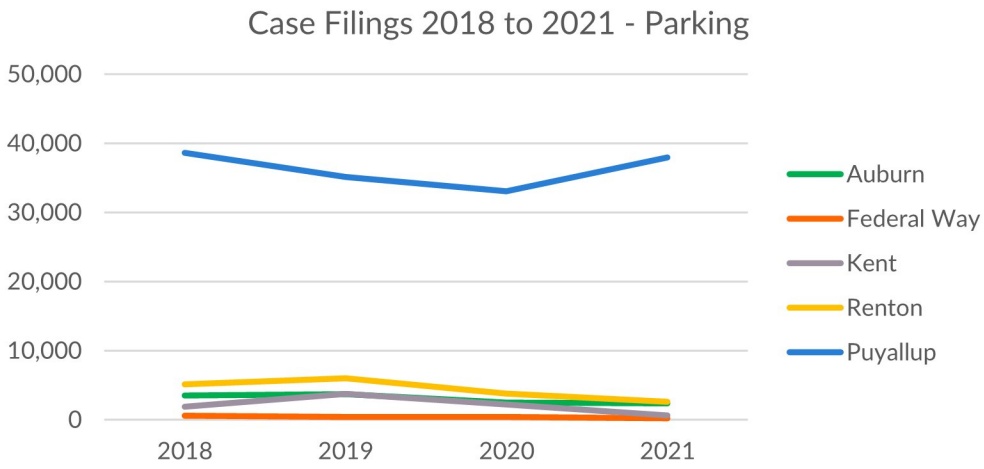
3.1.1 Comparative Data

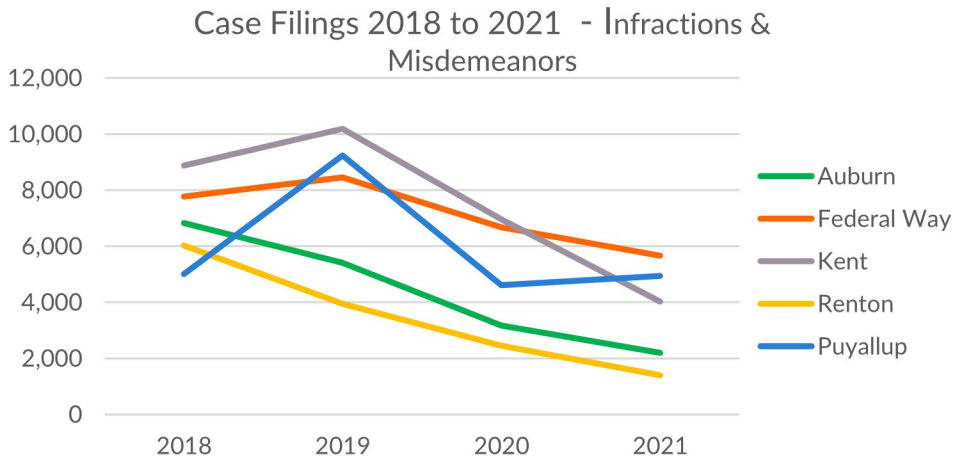
This subsection includes comparative caseload, financial, staffing, and related data used to analyze the establishment of a city-operated court in Auburn. Data was obtained directly from the comparative courts as well as from the Washington Courts statistical website (Washington State Courts - Caseloads of the Courts).

CASE FILINGS – 2018 TO 2021[3]

The first point of comparison is the relative levels of case filings. Data on cases filed provides a measure of the workload within the court. Because of the difference in the relative workload attributable for infractions and misdemeanors compared to parking filings, we split those categories in the charts below. We reviewed case filing data for the years 2018 through 2021. Case filing data for 2022 was not available for all courts as this data collection began.

[3] In some years, some of the courts listed here include filings for Civil Protection Orders, Civil cases, and Felony Complaints; the number of such cases are very low, typically fewer than 10 per year and were excluded from the data presented here.





Infraction & Misdemeanor case filings in Auburn, as well as each of the comparative courts, declined significantly during the pandemic years of 2020 and 2021. This is in line with statistics for courts nationwide. However, both Auburn and Renton were already experiencing declining case filings from 2018 to 2019. The other comparative courts, Federal Way, Kent, and Puyallup reported increasing filings prior to the pandemic period. While Auburn's case filings were higher than Renton's throughout the entire 4-year period, the trend lines between these two courts are similar.

Auburn's level of case filings across the entire 4-year period compares to the other courts as follows:

Cumulative Total Case Filings for Auburn & Comparative Courts – 2018 to 2021

	Total Infraction & Misdemeanor Filings	Infraction & Misdemeanor Difference Auburn Total less Comparative Court Total	Total Parking Filings	Parking Difference Auburn Total less Comparative Court Total	Combined Difference Auburn Total less Comparative Court Total
Auburn	25,501		12,004		
Federal Way	33,533	-8,032	1,538	10,466	2,434
Kent[4]	41,630	-16,129	8,442	3,562	-12,567
Renton	20,115	5,386	17,471	-5,467	-81
Puyallup	29,242	-3,741	144,756	-132,752	-136,574

Parking filings also generally declined from 2018 to 2021 in all courts except Puyallup. That court saw a rebound in parking filings during 2021 amounting to 98.2% of its 2018 level. The Puyallup Municipal Court is also highly active in processing parking cases. Puyallup's cumulative total parking filings of 144,756 is more than 8 times larger than the next largest cumulative total of 17,471 in Renton. The KCDC filing data indicates that Auburn's cumulative 4-year parking total filings were 12,004.

2018

	Infractions		Misdemeanors				
	Traffic	Non-Traffic	DUI/ Physical Control	Other Traffic	Non-Traffic	Total Infractions & Misdemeanors	Parking
Auburn	5,363	122	230	1,111	2,400	9,226	3,482
Federal Way	6,080	218	145	1,329	1,491	9,263	546
Kent	7,506	130	270	973	2,999	11,878	1,888
Renton	5,017	55	237	718	1,690	7,717	5,114
Puyallup	3,765	90	198	961	1,304	6,318	38,614

[4] The Kent Municipal Court has an ILA with the City of Maple Valley. Under this agreement, the Kent Municipal Court staff receive Maple Valley case filings, maintain all necessary records, schedule Maple Valley court proceedings, and all other administrative or clerical tasks. Maple Valley proceedings are conducted at the Kent Courthouse but are presided over by a Maple Valley appointed municipal judge. Maple Valley case filings are combined with Kent filings in these data and constitute about 20% of the combined totals.

2019

	Infractions		Misdemeanors				
	Traffic	Non-Traffic	DUI/ Physical Control	Other Traffic	Non-Traffic	Total Infractions & Misdemeanors	Parking
Auburn	4,302	109	200	793	2,075	7,479	3,697
Federal Way	6,649	246	179	1,380	1,476	9,930	395
Kent	8,767	272	314	834	3,829	14,016	3,735
Renton	3,157	35	208	552	1,631	5,583	5,992
Puyallup	7,500	147	311	1,279	1,479	10,716	35,139

2020

	Infractions		Misdemeanors				
	Traffic	Non-Traffic	DUI/ Physical Control	Other Traffic	Non-Traffic	Total Infractions & Misdemeanors	Parking
Auburn	2,393	59	195	530	1,874	5,051	2,461
Federal Way	5,401	227	142	905	1,056	7,731	403
Kent	6,007	190	280	489	2,749	9,715	2,207
Renton	1,838	45	167	401	1,778	4,229	3,777
Puyallup	3,225	78	207	1,102	1,590	6,202	33,054

2021

	Infractions		Misdemeanors				
	Traffic	Non-Traffic	DUI/ Physical Control	Other Traffic	Non-Traffic	Total Infractions & Misdemeanors	Parking
Auburn	1,713	33	201	251	1,547	3,745	2,364
Federal Way	4,511	138	142	872	946	6,609	194
Kent	3,464	166	156	241	1,994	6,021	612
Renton	989	10	153	248	1,186	2,586	2,588
Puyallup	3,673	65	236	972	1,060	6,006	37,949

COURT STAFFING – 2023

COURT STAFFING (FTE)

	Judicial Need Estimate	Judicial Officers Actual	Court Administrator	Court Administration*	Court Security	Therapeutic Courts	Probation Services	Total Staff & Judicial Officers
Federal Way	2.26	2.00	1.00	10.75	1.5		3.00	18.25
Kent	3.59	2.00	1.00	14.25		0.75	4.75	22.75
Renton	2.51	2.00	1.00	11.00	1.00		2.00	17.00
Puyallup	1.86	1.00	1.00	6.00	1.13	1.00	2.00	12.13

**Courtroom support, interpreters, case management, calendaring, jury management, records management, receipting and collections, and customer service*

ANNUAL EXPENDITURES – 2018 TO 2021

This next area explores the cost of operating a municipal court based on the expenditure information provided by the comparative courts. In courts of all types and sizes, most operating expenses consist of personnel-related costs, i.e., salaries and benefits. As a percentage of total expenses, salaries & benefits costs typically comprise between 70% to 80% of total court operating expenditures.

The comparative courts provided the NCSC Consulting Team with financial reports detailing court expenditures for recent fiscal periods. While some courts did not provide this data for all periods requested, the available information is informative. Summaries of that data are presented below.

		Federal Way	Kent	Renton	Puyallup
2018	**Salaries & Benefits**	N/A	N/A	1,678,704	N/A
	Total Expenses	N/A	N/A	2,225,221	N/A
2019	**Salaries & Benefits**	N/A	2,077,803	1,804,867	1,111,362
	Total Expenses	N/A	2,935,496	2,397,554	1,605,762
2020	**Salaries & Benefits**	N/A	2,107,837	1,958,429	1,142,474
	Total Expenses	N/A	2,835,460	2,436,927	1,603,763
2021	**Salaries & Benefits**	N/A	1,979,096	2,064,879	1,204,839
	Total Expenses	N/A	2,808,701	2,632,080	1,685,168
2022	**Salaries & Benefits**	1,381,745	1,675,404	2,251,424	1,301,903
	Total Expenses	1,801,321	2,843,622	3,089,584	1,808,590

The data from the comparative courts show that the Kent Municipal Court had the highest total operating expenditures from 2019 through 2022. The Renton Municipal Court had the second highest total operating expenditures until it surpassed Kent in 2022. This appears to be primarily attributable to a roughly $200,000 increase in IT Operations expenditures by the Renton Court in 2022. Total expenditures by the Puyallup Municipal Court consistently run about 54% to 59% of the highest court total each year and are roughly equivalent to the 2022 budgeted total expenditures for the Federal Way Municipal Court.

The following table integrates the staffing, case filings and operating expenditures data to draw correlations among these various areas.

	Selected Staffing FTE			Infraction & Misdemeanor 4 Year Total Filings 2018 to 2021			Misdemeanor Only 4 Year Total Filings 2018 to 2021		Annual Court Operating Expenditures 2022		
	Judges	Court Admin Staff	Probation	Total Filings	Filings/ Judge FTE	Filings/ Admin Staff FTE	Total MSD. Filings	MSD Filings/ Probation FTE	Salary & Benefits	Other Operating	Total
Auburn[5]	1.95	5.14	N/A	17,605	2,200	733	11,407	N/A	N/A	N/A	**$1,289,534**
Federal Way	2.00	10.75	3.00	28,564	3,570	664	10,063	838	$1,381,745	$419,576	**$1,801,321**
Kent	2.00	14.25	4.75	30,059	3,757	527	15,128	796	$1,983,200	$860,422	**$2,843,622**
Renton	2.00	11.00	2.00	13,830	1,728	314	8,969	1,121	$2,251,424	$838,160	**$3,089,584**
Puyallup	2.00	6.00	2.00	23,809	2,976	992	10,699	1,337	$1,301,903	$506,687	**$1,808,590**
AVERAGE				**24,065**	**3,008**	**624**	**11,253**	**1,023**	**$1,729,568**	**$656,211**	**$2,385,779**

As might be expected, the Kent Municipal Court, which has the highest total expenditures during this period also has the highest 4-year cumulative infraction and misdemeanor filings and the highest total staffing level. Renton had the highest total expenditures only for 2022. Kent had the highest expenditures in 2019, 2020, and 2021. Cumulative totals for 2019 through 2022 are: Kent - $11,423,279 and Renton - $10,556,145. However, with 21 total staff Kent has lower 2022 salary & benefit expenditures than Renton with 15 staff. There is also a noted decline in Kent's expenditures from 2019 through 2021 and only a modest rebound in 2022. Total expenditures in the Renton and Puyallup courts generally increase throughout the period while cumulative filings mostly decline. The Federal Way court has the second highest cumulative infraction and misdemeanor filings while projecting the lowest total expenditures among the comparative courts in its 2022 budget.

[5] Auburn staffing and operating expenditure data were extracted from the ILA Budget Reconciliation prepared by KCDC. KCDC calculates staffing by use of a weighted caseload model and applies the results to its total budget to allocate the costs to individual contract cities. Staffing and expenditures data for the four comparison courts was obtained directly from each court.

The 2022 expenditure data includes the following items that are highlighted for comparison:

Federal Way

- There is a large amount, $271,776, budgeted as Miscellaneous Services and Charges.
- *Pro Tem* Judge Pay is budgeted at $48,000.
- Professional Services is budgeted at $96,000.

Kent

- 2022 expenditures for Property Rental were $258,120.
- The amount paid for Other Professional Services was $253,836.

Puyallup

- Professional Services for Interpreters & *Pro Tem* judges totaled $68,364.
- Facility Maintenance expenditures were $45,764.
- Operations Rentals & Lease expenditures were $206,986.

Renton

- Contract Services for Interpreters was $78,452, and for *Pro Tem* judges was $18,573.
- Information System Operations expenditures were $365,024 in 2022 representing a 131% increase since 2018.
- Facilities costs were $249,459 in 2022 representing a 33% increase since 2018.

3.1.2 Estimated Costs and Non-Financial Issues of Establishing the Auburn Municipal Court

Assumptions

- The number of Auburn cases filed and heard from 2018 to 2022 is generally in the middle to lower-middle of the range based on the comparative courts. Caseloads in Auburn, as well as the comparative courts, are down substantially from pre-pandemic levels. It is unclear whether and when they might increase to the levels seen in 2018 and 2019. For example, Auburn was 3rd of the 5 courts in combined Misdemeanor & Infractions filed in 2018 and 4th out of 5 in 2019 through 2021. The NCSC Consulting Team assumes that the future trend of caseload filings for the comparative courts will see some growth but Auburn will likely remain the lower to middle of the range.
- Staffing levels required for a new Auburn Municipal Court would likewise be in the middle range of the comparative courts. The NCSC Consulting Team assumes this would be most similar to the staffing levels in the Renton and Federal Way courts.
- The NCSC Consulting team assumes that annual operating expenditures would likely also be similar to Renton (17 total FTE among judges and staff) and Federal Way (18.25 total FTE among judges and staff) for two reasons.

  a. Salary & benefit expenditures represent by far the largest type of costs in courts; and

  b. These courts are the closest to Auburn in terms of the cumulative total number of cases filed from 2018 through 2021.

  However, there is a significant difference in salary & benefits expenditures between these two comparative courts; 2022 budgeted salary & benefits in Federal Way were $1.38 million and actual salary & benefits expenditures in Renton were $2.25 million. In addition, other operating costs were $419,000 in Federal Way and $838,000 in Renton. We have received no clear reason why similarly sized courts have such divergent costs.
- Changes in total operating expenditures in the comparative courts varied widely among the comparative costs. For example, total annual expenditures in Kent Municipal Court declined 3.1% from 2019 to 2022, in Puyallup they increased by 12.6%, and in Renton Municipal Court they increased by 38.8% from 2018 to 2022. The NCSC Consulting Team assumes a steady 5% annual increase in future projections.

Estimated Costs

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The NCSC Consulting Team considered the caseloads, staffing structures, and financial reports from the comparative courts. The levels of staffing and the operational needs of all courts are primarily driven by caseload; however, the impacts can vary widely based on local cultures, differing legal requirements, use of technologies in managing cases, and the capacities of stakeholder groups such as prosecutors and public defense attorneys. The two comparative courts that reported combined 4-year case filings that were most similar to Auburn's were Federal Way and Renton.

2022 expenditures are the most recent financial data available from the comparative courts, so our first step was to create a "pro-forma" 2022 baseline for an Auburn Municipal Court. As mentioned above, the salary & benefits cost varied widely between Federal Way and Renton. We then calculated the mid-range between these two courts. The result is listed in the table below as the 2022 Baseline. From there we calculated a 5.0% annual increase in estimated costs. Because we anticipate the current ILA with KCDC runs through 2025, we estimated operating costs beginning in 2026.

Estimated Annual Operating Costs

	2022 Baseline	2026[6]	2027	2028
Salary & Benefits	$1,816,584	$2,208,069	$2,318,473	$2,434,396
Other Operating Expenses	$628,868	$764,393	$802,612	$842,743
Total	**$2,445,453**	**$2,972,462**	**$3,121,085**	**$3,277,140**

In addition to the annual operating costs beginning in 2025, the City may incur significant startup costs prior to commencing operations such as:

- Furniture and Fixtures
- Information Technology – Hardware
- Information Technology – Software
- Website Development
- Facility Redesign & Remodeling

[6] The estimated costs for 2026 are greater than a 5% increase from 2022 because of anticipated increases for years 2023 through 2025, before the commencement of operations in 2026.

Non-Financial Considerations

- **Focus on Auburn Issues**

  Municipalities vary in terms of the types of traffic and misdemeanor violations that they experience. For example, Auburn has experienced increased numbers of homeless residents leading to concerns among local businesses and residents that the KCDC is not effectively dealing with the impacts.

- **Service and convenience to the Auburn community**

  Ease of accessibility including location, hours of service, online services, etc. should be considered. One consideration would be the impact on Auburn residents as small claims, name changes, and protection order cases, which are statutorily designated as district court cases, may likely be moved to another location as determined by KCDC.

- **Local Performance Measures versus District Court**

  This would be done by a comparative analysis of the performance level of the courts. For example, are cases expected to be resolved more quickly, will jurors be used effectively, and would there be a perceived difference in fairness/consistency?

There are several non-financial criteria that should also be carefully considered by the City throughout the decision-making process. These criteria include, but are not limited to, the following (descriptions are generally provided without implying benefits of one approach over another):

- **Full-Service Criminal Justice System**

  Municipalities sometimes identify with, and have a point of pride in, managing a full-service criminal justice system including the enforcement, prosecution, and adjudication of cases. This interest often overlaps with the previous criteria.

- **Alternative Sentencing Options & Problem-Solving Court**

  Courts vary with respect to the development and participation in alternative sentencing options and specialty, or problem-solving, courts. These can include Drug Courts, Veteran's Courts, Homeless Courts, etc. While generally effective, these approaches require dedicated involvement by law enforcement agencies, prosecutors, public defense attorneys, probation agencies, and treatment providers. Generally, a critical mass of eligible defendants is needed to ensure the effective implementation of such efforts.

3.2 Potential Revisions to Provisions of the KCDC ILA

The ILA executed in 2021 was effective on January 1, 2022, and remains in effect through December 31, 2026. The agreement may be terminated by either the KCDC or the City of Auburn, without cause by providing written notice to the other by February 1, 2025, for termination during this initial term. The agreement also contains provisions which facilitate review of the terms during the agreement in section 6.0.

Photo Credit: Adobe Stock

Provisions of the ILA which may need further review and/or negotiation:

- ***2.2.2 - Changes in Court Processing***: This section requires the KCDC to provide sixty days' written notice prior to making changes in court processing procedures which may directly impact the City's operations.

In this case, the City's operations may include the prosecuting Legal Department and the court-appointed defense counsel, and may also include the Auburn Police Department, and the Auburn Finance Department. During the interviews, both onsite and virtual, there was no mention of written communication regarding changes in court processing. Often, changes made by judges and court management staff affected court processing and should have been provided with written notice sixty days prior to implementation.

Recommendation: It is recommended that this section be changed to include a provision for feedback on the proposed changes. It is important to acknowledge the existence of judicial independence, but receiving feedback and then issuance of a written final determination may be appropriate. The written final determination can be a source of authority, if needed.

- ***2.2.5 - Regular Court Calendars:*** This section requires collaboration between the court and the City in most situations. There are provisions for obtaining mutual consent to change daily calendars for most situations. There are dates certain by which the City may make objections to the number of calendars per year. Exhibit D of the ILA indicates that calendars are Monday through Friday, may be adjusted by mutual agreement, and that the agreement is memorialized in writing between the Chief Presiding Judge/designee and the City's representative.

Recommendation: During interviews, stakeholders expressed that calendars are changing frequently. If the changing of calendars happens outside of the parameters of 2.2.5 and Exhibit D, the Mayor should be in contact with the KCDC Presiding Judge to discuss the matter.

- ***2.2.6 - Participating City Judicial Services:*** This section allows the City to submit a pool of judges from which the Presiding Judge may choose to assign judges to the City.

Recommendation: The City stakeholders indicated that the current judiciary is too lenient on criminal defendants in terms of FTAs, continuances, and when pronouncing sentences. It is recommended that a provision be added that requires the KCDC to provide data on each judge eligible for appointment to the City of Auburn. The data requirement includes data on the number of FTAs, the number of continuances granted, and aggregate sentence data on cases sentenced by the judge for the preceding twelve months. The data should be provided in a format that is easily read, able to be

understood by City personnel, and should be provided no later than June 30 of each year. This will assist the City in preparing their pool of judges.

- *2.3 - District Court Management Review Committee (DCMRC):* This section sets forth the provisions for the formation of the DCMRC, sets meetings quarterly, defines "mutual agreement", requires preparation of an annual reconciliation of cost and fees, and grants authority to the committee to oversee the services provided under the ILA.

Recommendation: It is recommended that the section contains a provision for appointment of staffing of the committee for the purpose of soliciting agenda topics for each meeting, meeting preparation, distribution of agendas, and serving as secretary at the meetings. The secretary should take the minutes of the meeting and distribute the minutes within 10 days following the meeting.

- *2.4 - Court Facility Management Review Committees (CFMRC):* This provision is similar to 2.3, but it sets forth the provisions for establishing a local court management review committee.

Recommendation: It is recommended that the section contains a provision for appointment of staffing of the committee for the purpose of soliciting agenda topics for each meeting, preparation and distribution of agendas, and serving as secretary at the meetings. The secretary should take the minutes of the meeting and distribute the minutes within 10 days following the meeting.

The agendas for this committee should include standing items for each judicial partner and allow discussion on concerns, and resolution. All decisions made at these meetings should be documented and disseminated among the membership.

- *3.1.7 - Call and Payment Center Charge:* - This section requires the City to pay for space used for the call center and payment center.

Recommendation: During stakeholder interviews, it was learned that there are several Court Clerks in the Auburn location. These employees work on cases for the City of Auburn and the City of Covington. They also work for KCDC. In addition, every location is considered a pay center and customer service for every King County Court, e.g., defendants may make payments at any location. Thus, an extra call center/payment center is not required, but to the extent it is required, Auburn receives no rental payments from KCDC or from the City of Covington, and should not be charged for a call center/payment center. It is recommended that this be stricken from the ILA. The call/payment center should be provided at no extra expense to the City of Auburn.

- *4.3 - Annual Reconciliation:* This section defines the process for preparation and distribution of the annual reconciliation. The section does not appear to contain a provision for the ability of the City to challenge the reconciliation.

Recommendation: It is recommended that a provision be added to allow the City to challenge any portion of the reconciliation. It is further recommended that data reports showing caseload accompany the report as well as justification and documentation on personnel. Current justification indicates that five of the fifteen clerks at the Auburn location are dedicated to Auburn cases, but KCDC indicates all the clerks are involved in processing Auburn cases. Additional documentation and justification should be requested.

4.0 CONCLUSION

The report outlines the polarizing perspectives of the City of Auburn and the KCDC stakeholders regarding municipal court services in Auburn. The NCSC Consulting Team used a variety of strategies to gather perspectives that were more neutral to assist the City of Auburn in their decision but was unsuccessful. The City of Auburn must consider both the financial and non-financial implications when making their final decision. If the City of Auburn decides to terminate the agreement with KCDC and begin the process of reestablishing a city-operated municipal court, local authority and control over judicial philosophy may increase through the judicial appointment process, but this control cannot be predicted in future elections. The City of Auburn may find themselves in a similar situation pre-2012 where a strict judicial philosophy and sentencing practices of an elected judge may contribute to financial challenges and not be in alignment with Auburn residents' views. On the contrary, an elected judge may have a more lenient judicial philosophy and sentencing practices which would not be in alignment with local business leaders and city officials.

If the City of Auburn continues with the ILA with KCDC, it is recommended that the City hire a dedicated staff member with background in both court operations and finance. This position could establish a positive working relationship with KCDC, assist with developing policies and procedures that are beneficial to both the City and KCDC, troubleshoot issues that arise, review court performance measures and financials, and negotiate the ILA with KCDC. Having someone with this specific expertise would allow the Director of Human Resources to focus on their subject matter expertise and not be expected to understand and negotiate the complex operations of the court.

The information and recommendations contained within this report will position the City of Auburn to make the most informed decision regarding municipal courts services into the future.