

**City Council
Study Session
Community Wellness SFA
June 22, 2026 - 5:30 PM
City Hall Council Chambers**

AGENDA

CALL TO ORDER

PUBLIC PARTICIPATION

- A. The Auburn City Council Study Session Meeting scheduled for Monday, June 22, 2026, 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: 253 215 8782

Toll Free: 877 853 5257

Zoom: <https://us06web.zoom.us/j/84665632075>

ROLL CALL

AGENDA MODIFICATIONS

ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

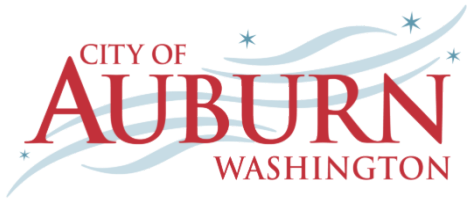
AGENDA ITEMS FOR COUNCIL DISCUSSION

- A. Ordinance No. 7020 (Krum) (20 Minutes)
An Ordinance relating to Nonconforming Structures, Land, and Uses Regulations amending Sections 18.54.050, 18.54.060, 18.54.070, 18.54.080, and 18.70.020 of the Auburn City Code
- B. Ordinance No. 7024 (Gaub) (5 Minutes)
An Ordinance granting to Astound Broadband, LLC, a Washington Limited Liability Company, a Franchise for Wireline Telecommunications

COUNCIL REPORTS

ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office and on the City website (<http://www.auburnwa.gov>).



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 7020 (Krum) (20 Minutes)
An Ordinance relating to Nonconforming Structures, Land, and Uses
Regulations amending Sections 18.54.050, 18.54.060, 18.54.070,
18.54.080, and 18.70.020 of the Auburn City Code

Meeting Date:

June 22, 2026

Department:

Community Development

Attachments:

Presentation, Ordinance No.
7020, Ordinance No. 7020
Exhibit A

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

The proposed amendments to Chapter 18.54 “Nonconforming Structures, Land, and Uses” and Section ACC 18.70.020 “Special Exceptions” of the Auburn City Code are to provide greater flexibility in the continuation and maintenance of legally established nonconforming structures, land, and uses to reduce unintended hardships on property owners and businesses while maintaining the City’s long-term vision and consistency with the Comprehensive Plan.

During the last Periodic Comprehensive Plan update, completed at the end of 2024, the City made major adjustments or changes to the Zoning Ordinance (Title 18) and the Zoning Map. These changes were completed so that the Zoning Ordinance and Zoning Map would be consistent with changes to the City’s Comprehensive Plan and Comprehensive Land Use Map. Also, since 2024, the City has also updated the Downtown Subarea Plan and all zones within the downtown subarea. Lastly, recent State legislation, such as House Bill (HB) 1491 related to Transit Oriented Development within “station areas”, will further result in changes to the Zoning Ordinance and Zoning Map.

Nonconforming structures, land, and uses are governed by the development regulations contained in Chapter 18.54 of the Auburn City Code. The purpose of this Chapter is to allow for the continuance and maintenance of legally established nonconforming structures, land, and uses. A nonconforming use is one that, when originally established, complied with the categories of uses established, development standards, and other applicable regulations at the time but no longer conforms. A legally established nonconforming structure, land, or use means it was legal or lawful when it was established. A structure, land, and use may become nonconforming when either it becomes prohibited (i.e. is no longer allowed), the applicable development standards change, or the zoning

district of which it resides changes.

The proposed amendments to Chapter 18.54 ACC were transmitted to the Washington State Department of Commerce for agency review on February 6, 2026. No comments were received. The Planning Commission reviewed the proposed code update on May 5, 2026 at their regular meeting. A State Environmental Policy Act (SEPA) Non-Project Action Determination of Non-Significance (DNS) was issued on March 4, 2026. The appeal period expired on March 18, 2026. No appeals were received. The Planning Commission held a Public Hearing on June 2, 2026, and provided a recommendation to City Council.

Councilmember: Tracy Taylor

Staff: Jason Krum

CITY COUNCIL STUDY SESSION

**NONCONFORMING
CODE UPDATE**

**PRESENTED BY
JASON KRUM - DIRECTOR
JUNE 22, 2026**

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

AUBURN
VALUES

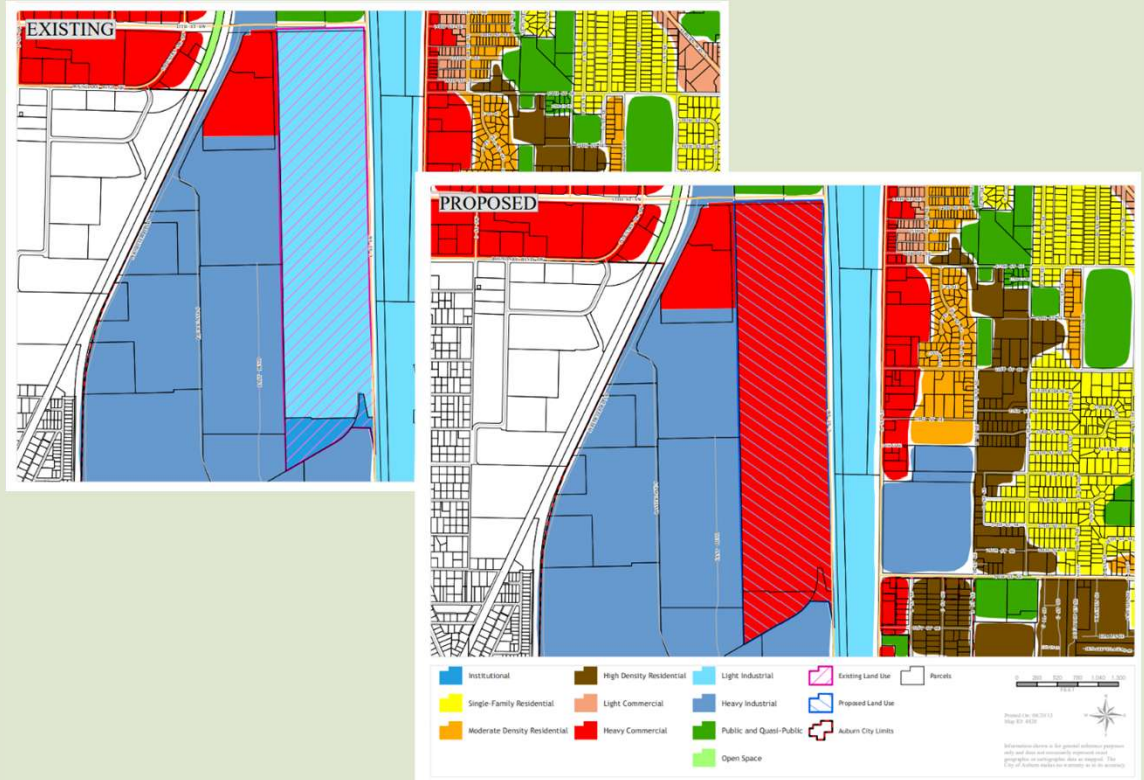
S E R V I C E
E N V I R O N M E N T
E C O N O M Y
C H A R A C T E R
S U S T A I N A B I L I T Y
W E L L N E S S
C E L E B R A T I O N

WHAT ARE NONCONFORMING USES?

Table 18.23.030. Permitted, Administrative, Conditional and Prohibited Uses by Zone, Commercial and Industrial Zones

LAND USE	Zoning Designation					Standards for Specific Land Uses
	C-1	C-2	C-AG	M-1	M-2	
INDUSTRIAL, MANUFACTURING AND PROCESSING, WHOLESALING						
Building contractor, light	X	P	X	P	P	
Building contractor, heavy	X	X	X	A	P	
Manufacturing, assembling and packaging – Light intensity	X	P	X	P	P	ACC 18.31.180
Manufacturing, assembling and packaging – Medium intensity	X	A	X	P	P	ACC 18.31.180
Manufacturing, assembling and packaging – Heavy intensity	X	X	X	X	A	ACC 18.31.180

P – Permitted
 C – Conditional
 A – Administrative
 X – Prohibited



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

WHICH STANDARDS GOVERN? CHAPTER 18.54 ACC

- 18.54.010
 - 18.54.020
 - 18.54.030
 - 18.54.040
 - 18.54.050
 - 18.54.060
 - 18.54.070
 - 18.54.080
- Intent
 - Continuance
 - Use of nonconforming land
 - Nonconforming signs
 - Changes of use...
 - Maintenance...
 - Abatement
 - Amortization of outdoor storage

PROPOSED CHANGES CHAPTER 18.54 ACC

- **18.54.060 (G) – Improvements Allowed**
Not to exceed 50% valuation

CURRENT CODE	PROPOSED CODE
Over the life of the use	Within a 5-yr period

PROPOSED CHANGES CHAPTER 18.54 ACC

- **18.54.060 (G) – Expansion of Use**

CURRENT CODE	PROPOSED CODE
Up to 25% - HEX	Up to 10% - Administrative Up to 25% - HEX

PROPOSED CHANGES CHAPTER 18.54 ACC

- **18.54.070 (B) – Discontinued Use**
Reestablishment must be within

CURRENT CODE	PROPOSED CODE
180-days No extension No Conditions	3-yrs 2, 1-yr extension Conditions apply

PROPOSED CHANGES CHAPTER 18.54 ACC

- **18.54.070 (B) – Discontinued Use**
Reestablishment conditions
 - **No code enforcement violations**
 - **Property maintained in good standing**
 - **Property is actively marketed for sale at competitive rates**

PLANNING COMMISSION

- **Planning Commission Discussion**
 - **May 5, 2026**
 - **Presentation & Discussion**
 - **June 2, 2026**
 - **Presentation**
 - **Public Hearing**
 - **Deliberation and Vote (Recommendation)**

**NEXT STEPS:
RECOMMENDED ACTION
ORD. NO. 7020
JULY 6, 2026**

QUESTIONS?

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

**AUBURN
VALUES**

S E R V I C E
E N V I R O N M E N T
E C O N O M Y
C H A R A C T E R
S U S T A I N A B I L I T Y
W E L L N E S S
C E L E B R A T I O N

ORDINANCE NO. 7020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO NONCONFORMING STRUCTURES, LAND, AND USES REGULATIONS AMENDING SECTIONS 18.54.050, 18.54.060, 18.54.070, 18.54.080, AND 18.70.020 OF THE AUBURN CITY CODE

WHEREAS, nonconforming structures, land, and uses are governed by the development regulations contained in Chapter 18.54 of the Auburn City Code (ACC), which purpose is to allow for the continuance and maintenance of legally established nonconforming structures, land, and uses; and

WHEREAS, legally established nonconforming structures, land, or uses exist when the structure, land, or use conformed to the regulations and laws in existence at the time of the initial project action but no longer conform because of amendments over time to regulatory authority; and

WHEREAS, ACC section 18.70.020(A)(3) allows the Hearing Examiner, after a public hearing, to authorize five specific deviations from development regulations known as “special exceptions,” one of which is an expansion of a legal nonconforming use or structure; and

WHEREAS, ACC 18.68.030(B) allows for a “Zoning Text Amendment” or change to the text of Title 18 ACC if an application is submitted and processed as a legislative nonproject decision, consistent with ACC 14.03.060 and other public notice provisions of Title 14 ACC; and

WHEREAS, during the last Periodic Comprehensive Plan update, completed at the end of 2024, the City made major amendments to Title 18 (“Zoning”) and the Zoning

Map (ACC 18.02.080) to be consistent with changes to the City’s Comprehensive Plan and Comprehensive Land Use Map; and

WHEREAS, the intent of these text amendments is to provide greater flexibility in the continuation and maintenance of legally established nonconforming structures, land, and uses to reduce unintended hardships on property owners and businesses while maintaining the City’s long-term vision and consistency with the Comprehensive Plan; and

WHEREAS, under Revised Code of Washington (RCW) 36.70A, the proposed text amendments were transmitted to the Washington State Department of Commerce on February 6, 2026, which commenced a 60-day notice period that ended on April 7, 2026, during which no comments were received; and

WHEREAS, a State Environmental Policy Act (SEPA) Non-Project Action Determination of Non-Significance (DNS) was issued on March 4, 2026, which appeal period expired on March 18, 2026, with no appeals received; and

WHEREAS, the Planning Commission held a public hearing on June 2, 2026, and, following public testimony and deliberation, voted to recommend these text amendments to City Council for adoption.

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

Section 1. Amendment to City Code. Sections 18.54.050, 18.54.060, 18.54.070, 18.54.080, and 18.70.020 of the Auburn City Code are amended to read as shown in Exhibit A.

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

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

Section 4. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers, and any references thereto.

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

Published: _____

**Chapter 18.54
NONCONFORMING STRUCTURES, LAND AND USES**

Sections:

- 18.54.010 Intent.**
- 18.54.020 Continuance of nonconforming structures and uses.**
- 18.54.030 Use of nonconforming land.**
- 18.54.040 Nonconforming signs.**
- 18.54.050 Changes of use, tenancy, ownership or management.**
- 18.54.060 Maintenance, damage repairs and restorations, additions, enlargements, moving or relocation of nonconforming structures, and residential structures.**
- 18.54.070 Abatement of nonconforming structures and uses.**
- 18.54.080 Amortization and abatement of outdoor storage.**

18.54.010 Intent.

Amendments over time to regulatory authority provided within this title may result in structures, land and uses which no longer conform with the provisions set forth for the district in which they are situated. Therefore it is the intent of this chapter to allow for the continuance and maintenance of legally established nonconforming uses subject to standards and provisions prescribed within this chapter. (Ord. 4229 § 2, 1987.)

18.54.020 Continuance of nonconforming structures and uses.

Any nonconforming structure or use lawfully existing on the effective date of this title, or any subsequent amendments to this title, may be continued and maintained in conformance with provisions of this chapter, provided no enlargement of area, space or volume occupied by the nonconforming use occurs. Any nonconforming structure authorized by a valid building permit prior to the effective date of the ordinance codified in this title, or any subsequent amendments to this title, may be completed and used in accordance with the plans, specifications and

regulations under which such permit was issued. Expiration of authorized permits will result in a loss of vested right for construction and use of such structure. (Ord. 4229 § 2, 1987.)

18.54.030 Use of nonconforming land.

If any parcel of land with a minimum lot size or lot dimension which is less than that prescribed for by the district in which such parcel is located, was subdivided into lots according to a plat of record on or before the effective date of the ordinance codified in this title, or any subsequent amendments to this title, then the fact that the parcel of land does not meet the minimum lot size or lot dimension requirements as set forth in this title shall not prohibit the property from being utilized; provided, that all other regulations prescribed for that district by this title are complied with, except as provided for in Chapter [18.31](#) ACC. (Ord. 4229 § 2, 1987.)

18.54.040 Nonconforming signs.

Nonconforming signs shall be subject to provisions of Chapter [18.56](#) ACC. (Ord. 4229 § 2, 1987.)

18.54.050 Changes of use, tenancy, ownership or management.

Changes of use, tenancy, ownership or management may occur to any existing legally established and continued nonconforming use under one or more of the following circumstances:

- A. Any part of a structure occupied by an existing legally established and continued nonconforming use may be changed to a use which, in the opinion of the ~~planning d~~Director of Community Development or designee, is of the same or of a more restrictive nature. When the use of a nonconforming structure is hereafter changed to a more restrictive use, the structure shall not thereafter be used for a less restrictive use.
- B. There may be a change of tenancy, ownership or management of any existing legally established and continued nonconforming use provided there is no change in the nature or

character of such nonconforming use except as authorized within this chapter. (Ord. 4229 § 2, 1987.)

18.54.060 Maintenance, damage repairs and restorations, additions, enlargements, moving or relocation of nonconforming structures, and residential structures.

- A. Ordinary maintenance of a nonconforming structure which includes minor interior and exterior repairs and incidental alterations is permitted. Minor maintenance and repair may include but is not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions.
- B. No structural alterations, as defined by the Uniform-International Building Codes, shall be made except as required by law or ordinance; provided, that the cost of such work shall not exceed 50 percent of the assessed valuation of such structure as established by the most current county assessor's tax roll.
- C. A nonconforming structure having been damaged or partially destroyed to an extent not exceeding 50 percent of the assessed valuation of such structure as established by the most current county assessor's tax roll, may be restored to its original condition, as authorized by the city's building official, and its immediately preceding or existing use at the time of partial destruction may be continued or resumed. Restoration shall begin within one year and be completed within two years of the date of partial destruction. If restoration is not started within one year, then the reuse and occupancy of the structure shall conform to all the regulations of the district in which the use is located.
- D. Structures or lands which are nonconforming as to use regulations shall not be enlarged or intensified in any manner unless the enlargement within such structures or lands conforms to all regulations of the district in which it is located, except for expansion permitted under ACC 18.54.060(H). A nonconforming use, within a nonconforming structure, shall not expand into any portion of the nonconforming structure.

E. Structures which are nonconforming as to percentage of site coverage, setbacks, building height or density shall not be enlarged unless such enlargement conforms to the regulations of the district in which it is located.

F. Nonconforming residential structures are allowed to provide maintenance, alterations and additions which may exceed the requirements of this chapter; provided the total number of dwelling units does not increase and all other development standards of the district are complied with.

G. This chapter shall not prevent the following provided the total value of the improvements, ~~over the lifetime of the nonconforming use within five years of the date of permit issuance,~~ does not exceed 50 percent of the assessed value of the nonconforming use as established by the most current county assessor's tax roll, ~~except for the following items: - and, the - nonconforming use or structure is not expanded except as allowed by subsection H of this section; provided further, that any replacement of a nonconforming structure, or parts thereof, must comply with the appropriate development standards unless a special exception is granted pursuant to ACC 18.70.020:~~

1. Strengthening or restoring to a safe condition any nonconforming structure or part thereof which is declared to be unsafe or a hazard to the public by the order of the Community Development Director or designee ~~a city official charged with protecting the public safety;~~
2. Lessening a hazardous situation, nuisance or other adverse environmental impact;
3. Bringing the structure or use into more conformance with this title;
4. Adapting the structure to new technologies or equipment; or
5. Improvements which do not increase the intensity of the nonconforming use.

~~H. Any replacement of a nonconforming structure, or parts thereof, must comply with the appropriate development standards unless a special exception is granted pursuant to ACC 18.70.020.~~

~~I.H. A nonresidential structure or use which becomes a legal nonconforming structure or use after the effective date of the ordinance codified in this title may - may expand the existing use or structure subject to the requirements of this chapter. be permitted by means of a special-~~

~~exception~~A legal nonconforming structure or use may be expanded administratively up to 10% by the director or designee. Expansions of a legal nonconforming structure or use by more than 10%, not to exceed 25%, may be permitted by means of a special exception issued by the hearing examiner pursuant to ACC [18.70.020](#) ~~to expand the existing use or structure up to 25 percent of the use or structure existing at the time of the adoption of the ordinance codified in this title~~; provided further, that the addition otherwise meets the standards of this title and other requirements of the city.

This section does not allow the expansion of a use or structure which would be inconsistent with a previously authorized administrative use permit, conditional use permit, special property use permit, contract rezone, or binding agreement between the city and the property owner.

This section also does not allow the expansion of any nonconforming hazardous material storage.

J. When a building or structure is moved to another location it must then be made to conform to the requirements of the district to which it is moved, unless specifically allowed elsewhere by this title.

KJ. Nonconforming ~~single-unit detached, middle housing, and apartments~~ ~~single-family residential homes~~ and their accessory structures may be replaced and the new structure shall either meet the development standards of the district in which the ~~home is~~ dwelling unit is or are located or the new structure shall not be more nonconforming than the previous use. All other applicable building and fire code requirements must be complied with. (Ord. 6269 § 21, 2009; Ord. 5170 § 1, 1998; Ord. 4705 § 2, 1994; Ord. 4304 § 1(43), 1988; Ord. 4229 § 2, 1987.)

18.54.070 Abatement of nonconforming structures and uses.

Nonconforming structures and uses shall be abated if one or more of the following circumstances exist:

A. If a nonconforming use is discontinued and changed to a conforming use, any future use of the structure or land shall be in conformity to the regulations of the district in which structure or land is located.

~~B. If a nonconforming use or structure is discontinuedAny structure or portion of a nonresidential structure, or parcel of land occupied by a nonconforming use which or becomes vacant or unoccupied and remains unoccupied for a continuous period of 180 days more than three years, it shall not thereafter be reestablished or occupied except by a use which conforms to the use regulations of the district in which it is located, unless the director or designee approves an extension pursuant to subsection C of this section. Failure to maintain compliance with the criteria set forth in subsection (C)(2) of this section during the period of vacancy or extension shall result in termination of the nonconforming status. Residential uses in commercial or industrial zones which are unoccupied for more than 180 days may be allowed to reoccupy if a special exception is issued pursuant to ACC 18.70.020;~~

~~C. The director or designee may administratively authorize the extension of a discontinued nonconforming use or structure, up to two-years, in one-year increments, through a Type I decision, allowing the nonconforming use or structure to be re-established without requiring the nonconforming use or structure to conform with the use regulations of the zoning district in which the property is located, subject to the following criteria and conditions:~~

~~1. An applicant for an extension shall make a written request for the extension a minimum of 90 calendar days prior to expiration of the discontinued nonconforming use.~~

~~2. The director or designee shall in consideration of granting an extension find:~~

~~a. The property has no open code enforcement violations; and~~

~~b. The property, including structures, landscaping, and amenities, is maintained so as to not appear degraded relative to the previous condition of the property nor detract from the surrounding neighborhood; and~~

~~c. The property owner has demonstrated a good faith effort to actively market the property for sale or lease at a competitive market rate for occupancy and reuse.~~

~~CD. If a nonconforming structure sustains damage or destruction which exceeds 50 percent of the current assessed valuation of the structure as established by the county assessor's office. Reconstruction of such damaged structure or reuse of occupancy shall conform to all regulations of the district in which it is located and it shall be treated as a new building. This subsection shall not apply to single-unit detached, middle housingfamily dwellings, and apartments. (Ord. 5170 § 1, 1998; Ord. 4229 § 2, 1987.)~~

18.54.080 Amortization and abatement of outdoor storage.

All outdoor storage yards that do not comply with the landscape and screening requirements of Chapter [18.50](#) ACC which are located within an M-1 zone that are adjacent to a residential zone or are visible from a public street ~~shall, within three years of the adoption of this title and make any improvements included in ACC 18.54.060, shall~~ screen and landscape the outdoor storage pursuant to the requirements of Chapter [18.50](#) ACC, or the use shall be abated. (Ord. 6885 § 1 (Exh. A), 2022; Ord. 4229 § 2, 1987.)

18.70.020 Special exceptions.

A. Only the following special exceptions may be granted by the hearing examiner after a public hearing is held pursuant to ACC [18.70.040](#):

1. Platted lots within the same block and same zone, but separated by a public alley, may be used as a single building site for the purpose of calculating the number of dwelling units permitted in a structure to be erected on one side of the alley, subject to the following requirements:

- a. Each portion of the property shall abut a minimum of 100 feet upon the alley.
- b. The two portions of the property shall be directly opposite for a distance representing at least 50 percent of the width of the portion of the property not to be occupied by the proposed building.
- c. The portion of the property not occupied by the building shall not be sold, segregated or used for building purposes so long as the building remains on the portion of property on the opposite side of the alley.

~~2. Whenever there is a change from a residential use to a nonresidential use in an existing building a special exception may be issued to exclude the floor area within the building, that cannot be effectively utilized by the proposed use, from the off-street parking requirements.~~

~~32. A nonresidential structure or use which becomes a legal nonconforming structure or use after may expand the existing use or structure subject to the requirements of this chapter. the effective date of the ordinance codified in this title may be permitted, by means of a special exception, Expansions of a legal nonconforming structure or use by more than 10%, not to exceed 25%, may be permitted by means of a special exception to expand the existing use or structure up to 25 percent of the use or structure existing at the time of the adoption of this title; provided further, that the addition otherwise meets the standards of this title and other requirements of the city.~~

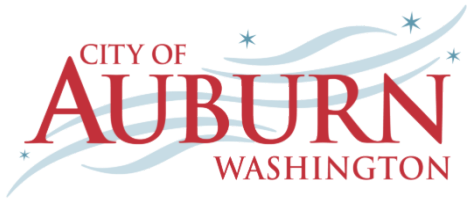
This section does not allow the expansion of a use or structure which would be inconsistent with a previously authorized administrative use permit, conditional use permit, special property use permit, contract rezone, or binding agreement between the city and

the property owner. This section also does not allow the expansion of any nonconforming hazardous material storage.

43. Pursuant to ACC [18.54.060\(G\)](#), a special exception may be issued for the replacement of a nonconforming structure or part thereof which does not comply with the appropriate development standards.

~~5. Pursuant to ACC [18.54.070\(B\)](#), a special exception may be issued for residential uses, in commercial or industrial zones, to reoccupy if unoccupied for longer than 180 days.~~

B. In considering applications for special exceptions, the hearing examiner shall consider the nature and condition of all adjacent uses and structures, and no such special exception shall be authorized by the hearing examiner unless the hearing examiner finds that the authorizing of such special exception will not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located, and that the authorization of such special exception will be consistent with the spirit and purpose of this title. In authorizing a special exception, the hearing examiner may impose such requirements and conditions with respect to location, installation, construction, maintenance and operation and extent of open spaces in addition to those expressly set forth in this title as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest. (Ord. 6269 § 24, 2009; Ord. 4840 § 1, 1996; Ord. 4229 § 2, 1987.)



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 7024 (Gaub) (5 Minutes)
An Ordinance granting to Astound Broadband, LLC, a Washington Limited Liability Company, a Franchise for Wireline Telecommunications

Meeting Date:

June 22, 2026

Department:

Public Works

Attachments:

Draft Ordinance No. 7024

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

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

Astound Broadband, LLC has applied for a new Franchise Agreement to continue to operate their existing fiber optic telecommunications facilities located in the public ways within the City Limits as their current Franchise Agreement is in a month to month status. Astound provides telecommunications services that include telecommunications capacity and dark fiber, transmission of voice, data, or other electronic information, non-switched, dedicated and private line services, and high capacity fiber optic transmission services to firms, businesses and institutions. The proposed agreement is consistent with the City's standard Franchise Agreement language.

A Public Hearing to consider this application and take public comment is scheduled before the City Council on July 6, 2026, in accordance with Auburn City Code 20.04.040.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 7024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, A FRANCHISE FOR WIRELINE TELECOMMUNICATIONS.

WHEREAS, Astound Broadband, LLC, a Washington limited liability company (“Franchisee”) holds an existing Franchise which has recently expired, and has applied for a new non-exclusive Franchise for the right of entry, use, and occupation of certain public ways within the City of Auburn (“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 new Franchise; and

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

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

Section 1. Definitions

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

A. “ACC” means the Auburn City Code.

B. “Franchise” means this agreement approved by Ordinance No. 7024 of the City which authorizes Franchisee Facilities and the providing of Franchisee Services in the Franchise Area.

C. “Franchisee’s Facilities” means fiber optic and broad band communications services infrastructure and equipment constructed and operated within the public ways including all cables, wires, conduits, ducts, pedestals, and

any associated converter equipment or other items necessary for Telecommunications Services as defined in RCW 35.99.010(7), 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 RCW 80.36.375. 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 its Facilities, 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 may also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City 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 2. Grant of Right to Use Franchise Area

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

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

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

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including franchise agreements, 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 Franchise, 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 may reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, 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, or as otherwise provided for by the reserved easement or other such instrument or authority.

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

H. Upon written request, the Franchisee shall provide the City with contact information for any user of the Franchisee's Facilities that has authority to physically operate, control, or access Franchisee's Facilities. Franchisee acknowledges that the City may determine if Franchisee's client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City

Section 3. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses, unless a different address is designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the receiving party. Any communication made by e-mail or similar method will not constitute notice pursuant to this Franchise.

City: Right-of-Way Specialist,
Public Works Department - Transportation
City of Auburn

25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010
Email Address: rowusepermit@auburnwa.gov

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

Franchisee: Astound Broadband, LLC
Attn: Jared Sonne, GM/SVP
4786 1st Ave S
Seattle, WA 98134
Telephone: (888) 317-0488

with a copy to: Astound Broadband, LLC
Attn: Legal Dept.
650 College Road East, Suite 3100
Princeton, NJ 08540
Email Address: legal@astound.com

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

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (888) 317-0488.

Section 4. Term of Franchise

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

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

Section 5. Acceptance of Franchise

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

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 Franchise, 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 Franchisee’s work, whether in progress or completed, 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, or such other timeframe as determined by the City.

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

Section 8. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee’s emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City’s actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

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

Section 10. Location Preference

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

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

Section 11. Relocation of Franchisee Facilities

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

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

Section 12. Abandonment and/or Removal of Franchisee Facilities

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

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

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

Section 13. Undergrounding

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

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

Section 14. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's database system, including the City's Geographic Information System (GIS) database. 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 third party claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise, except to the extent such injury or damage as shall have been occasioned by the gross negligence of the City.

However, should a court of competent jurisdiction determine that this Franchise 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 Franchise.

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 willful act or omission or 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 Franchise and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the public way.

B. No Limitation. The Franchisee's maintenance of insurance as required by this Franchise 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 Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 if the Franchise 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 ISO form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise 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 named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain insurance that meets or exceeds the following 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 \$1,000,000 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.

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 as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Franchise. The

Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

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

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within five 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 the Franchise, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Franchise.

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

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to prior approval by the City, which such approval shall not be unreasonably conditioned, delayed, or withheld. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following:

1. Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 16 Franchisee proposes to self-insure. This letter must include a description of Franchisee's self-insurance program a certificate and/or letter of coverage that outlines coverage, limits, and deductibles.

2. Franchisee's self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted

Accounting Principles (GAAP) and adhere to accounting standards promulgated by: Governmental Accounting Standards Board (GASB), Financial Accounting Standards Board (FASB), and the Washington State Auditor's annual instructions for financial reporting.

3. Franchisees participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The City of Auburn need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

4. Franchisee shall 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. If such financial statements are identified by the Franchisee as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at the Franchisee's local office in Seattle, Washington. If Franchisee no longer has a local office in Seattle, Washington, then Franchisee will make such financial statements available for the City's inspection at an alternate location within a 25-mile radius of the City of Auburn.

5. Franchisee or its parent company shall be responsible for all payments within the self-insured retention.

6. Franchisee assumes all defense and indemnity obligations as outlined in Section 15.

7. Franchisee shall provide a summary of coverages and a letter of self-insurance, evidencing continued coverage under Franchisee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance shall be provided on the anniversary of the effective date of this Agreement.

Section 17. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or

abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

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

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

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

Section 19. Dispute Resolution

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

B. If the City determines that Franchisee is acting beyond the scope of permission granted in this Franchise for Franchisee Facilities and Franchisee Services, the City reserves the right to 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 Franchise, 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 Franchise

This Franchise, 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 franchises between the parties pertaining to Franchisee's operation of its Facilities are hereby superseded.

Section 28. Effective Date.

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

INTRODUCED: _____
PASSED: _____
APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

PUBLISHED: _____

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

Astound Broadband, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

Franchisee Name: Astound Broadband, LLC

Address: _____

City, State, Zip: _____

By: _____

Signature

Date: _____

Name: _____

Title: _____

STATE OF _____)

)ss.

COUNTY OF _____)

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

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

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

Ordinance No. 7024
Franchise Agreement No. FRN24-0004
April 29, 2026
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