CITY OF AUBURN WASHINGTON	**City Council Meeting** **December 21, 2020 - 7:00 PM** **Virtual** **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. **VIRTUAL PARTICIPATION LINK**

1. Virtual Participation Link

The Auburn City Council Meeting scheduled for Monday, December 21, 2020 at 7:00 p.m. will be held virtually and telephonically. To attend the meeting virtually please click the link or enter the meeting ID into the Zoom app or call into the meeting at the phone number listed below.

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

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

The link to the Virtual Meeting or phone number to listen to the Council Meeting is:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. https://zoom.us/j/96641467135

Or join by phone:

253 215 8782
877 853 5257 (Toll Free)

Webinar ID: 966 4146 7135

A. **Pledge of Allegiance**

B. **Roll Call**

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

IV. APPOINTMENTS

A. Reappointments to Boards & Commissions

City Council to reappoint the following boards and commission members. All appointees will serve a new three-year term to expire on December 31, 2023

Cemetery Board
Jeanne Hicks

Transportation Advisory Board
Sarah Shaw - Transit User Position
Pamela Gunderson - Senior Citizen Position

White River Valley Historical Society
LeRoy Jones

(RECOMMENDED ACTION: Move to reappoint board and commission members.)

V. AGENDA MODIFICATIONS

VI. NEW BUSINESS

A. 2021 Deputy Mayor Selection

City Council to nominate and select a Councilmember to serve as Deputy Mayor for 2021

VII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. **Public Hearings - (No public hearing is scheduled for this evening.)**

B. **Audience Participation**

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

1. Virtual Participation

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

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

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

Email comments to:
publiccomment@auburnwa.gov

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

VIII. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

IX. CONSENT AGENDA

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

A. Minutes of the December 5, 2020 Special City Council Meeting

B. Minutes of the December 7, 2020 Regular Council Meeting

C. Claim Vouchers (Thomas)

Claim voucher list dated December 21, 2020 which includes voucher numbers 461763 through 461952 in the amount of $5,002,555.77 and two wire transfers in the amount of $437,488.53

D. Payroll Vouchers (Thomas)

Payroll check numbers 539048 through 539053 in the amount of $75,214.24, manual payroll check numbers 10119 through 10126 in the amount of $11,374.70, and electronic deposit transmissions in the amount of $2,212,516.33, for a grant total of $2,299,105.27 for the period covering December 2, 2020 to December 15, 2020

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

X. UNFINISHED BUSINESS

XI. ORDINANCES

A. Ordinance No. 6790 (Gaub, Tate)

An Ordinance amending Chapters 3.42, 3.84, 3.88 and 5.84 of the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6790.)

B. Ordinance No. 6797 (Gaub, Tate)

An Ordinance amending Chapters 12.24, 12.32 and 13.32A of the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6797.)

C. Ordinance No. 6798 (Gaub, Tate)

An Ordinance repealing Chapters 13.36, 13.44 and amending Title 20 of the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6798.)

D. Ordinance No. 6799 (Gaub, Tate)

An Ordinance amending and repealing language of the Auburn City Code related to updating provisions for wireless telecommunication facilities

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6799.)

E. Ordinance No. 6808 (Hinman)

An Ordinance amending sections of Chapter 2.07 of the Auburn City Code relating to Auburn Junior City Council membership nominations and meetings

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6808.)

XII. RESOLUTIONS

A. Resolution No. 5566 (Gaub)

A Resolution setting the date of the Public Hearing for ROW Vacation No. V2-20

(RECOMMENDED ACTION: Move to adopt Resolution No. 5566.)

B. Resolution 5563 (Tate)

A Resolution adopting the 2021 Community Development Block Grant Action Plan for the Consolidated Plan Years 2020-2024

(RECOMMENDED ACTION: Move to adopt Resolution No. 5563.)

C. Resolution 5567 (Tate)

A Resolution adopting the substantial amendment to the 2019 Community Development Block Grant Annual Action Plan to incorporate additional CDBG-CV Funds

(RECOMMENDED ACTION: Move to adopt Resolution No. 5567.)

D. Resolution 5568 (Tate)

A Resolution adopting the substantial amendment to the 2020 Community Development Block Grant Annual Action Plan

(RECOMMENDED ACTION: Move to adopt Resolution No. 5568.)

E. Resolution No. 5569 (Tate)

A Resolution endorsing use of the 2021 Valley Regional Fire Authority Fee Schedule as adopted by the VRFA Board Of Governance

(RECOMMENDED ACTION: Move to adopt Resolution No. 5569.)

F. Resolution No. 5570 (Tate)

A Resolution endorsing the 2021 Watershed Resource Inventory Area (WRIA) 9 State Legislative Priorities

(RECOMMENDED ACTION: Move to adopt Resolution No. 5570.)

XIII. MAYOR AND COUNCILMEMBER REPORTS

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

A. **From the Council**

B. **From the Mayor**

XIV. 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:
Minutes of the December 5, 2020 Special City Council Meeting

Date:
December 8, 2020

Department:
City Council

Attachments:
12-05-2020 Minutes

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

Administrative Recommendation:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Staff:

Meeting Date: December 21, 2020

Item Number: CA.A

Special City Council Meeting
December 5, 2020 - 9:00 AM
Virtual
MINUTES

I. CALL TO ORDER

Mayor Nancy Backus called the meeting to order at 9:11 a.m.

A. Virtual Participation Link

1. Virtual Participation Link
   The City Council Meeting was held virtually.

B. Roll Call

Councilmembers virtually present: Deputy Mayor Claude DaCorsi, Bob Baggett, Larry Brown, James Jeyaraj, Robyn Mulenga and Chris Stearns. Councilmember Yolanda Trout-Manuel was excused.

Mayor Nancy Backus and the following staff member were virtually present: Diversity, Equity and Inclusion Program Manager Brenda Goodson-Moore.

II. DISCUSSION ITEMS

A. Inclusive Auburn Initiative Training for City Council

Inclusive Auburn Initiative Training
Bernardo Ruiz, Racing to Equity Consulting Group

Mayor Backus introduced and welcomed Bernardo Ruiz and Caitlin Hoover from Racing to Equity Consulting Group who facilitated session five, part one of the Inclusive Auburn training with the City of Auburn City Council.

Council discussed racial equity, implicit bias, institutional and structural racism.

III. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 1:03 p.m.

APPROVED this 21st day of December, 2020.

_____ _____
NANCY BACKUS, MAYOR Shawn Campbell, City Clerk

Agendas and minutes are available to the public at the City Clerk's Office, on the City website

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

AGENDA BILL APPROVAL FORM

Agenda Subject:
Minutes of the December 7, 2020 Regular Council Meeting

Date:
December 9, 2020

Department:
City Council

Attachments:
13-07-2020 Minutes

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

Administrative Recommendation:

Background Summary:

Reviewed by Council Committees:

Councilmember:

Staff:

Meeting Date: December 21, 2020

Item Number: CA.B

CITY OF AUBURN WASHINGTON	**City Council Meeting** **December 7, 2020 - 7:00 PM** **Virtual** **MINUTES** **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. VIRTUAL PARTICIPATION LINK

1. Virtual Participation Link
   The City Council Meeting was held virtually.

A. Pledge of Allegiance

Mayor Nancy Backus called the meeting to order at 7:00 p.m. and led those in attendance in the Pledge of Allegiance.

B. Roll Call

Councilmembers virtually present: Deputy Mayor Claude DaCorsi, Bob Baggett, Larry Brown, James Jeyaraj, Robyn Mulenga, Chris Stearns and Yolanda Trout-Manuel.

Mayor Nancy Backus and the following department directors and staff members were present: Innovation and Technical Support Specialist Danika Olson, Director of Innovation & Technology David Travis, Assistant Police Chief Mark Caillier and Deputy City Clerk Teresa Mattingly.

The following department directors and staff members attended the meeting virtually: City Attorney Kendra Comeau, Director of Administration Dana Hinman, Director of Finance Jamie Thomas, Assistant Director of Finance Kevin Fuhrer, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Parks, Arts, and Recreation Daryl Faber, Director of Human Resources and Risk Management Candis Martinson, Real Property Analyst Josh Arndt, Arts & Events Manager Julie Krueger, Arts Coordinator Allison Hyde, Airport Manager Tim Mensonides and Assistant Director of Innovation and Technology Ashley Riggs.

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

There were no announcements, reports or presentations.

0068432

IV. APPOINTMENTS

A. 2021-2023 Auburn Poet Laureate

City Council to confirm the appointment of James Rodgers as Auburn's 2021-2023 Poet Laureate

Deputy Mayor DaCorsi moved and Councilmember Stearns seconded to approve the appointment of James Rodgers as Auburn's 2021-2023 Poet Laureate.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Airport Board - Reappointment Modification

Due to a clerical error, Mayor and City Council to approve the correction of Andrea Prasse's term date from 12/31/2021 to 12/31/2022

Deputy Mayor DaCorsi moved and Councilmember Brown seconded to approve the correction of term date from 12/31/2021 to 12/31/2022.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Reappointments to Boards & Commissions

City Council to reappoint the following boards and commission members. All appointees will serve a new three-year term to expire on December 31, 2023

Arts Commission
Eydie Leighty

Auburn Lodging Tax Advisory Committee
Aman Ghag
Reggie Matto

Auburn Tourism Board
Julie Krueger
Rachael McAlister

BIA Rate Payer Committee
Bill Cowart
Bob Klontz

Parks and Recreation Board
Michael Hassen
Michael Palko-Dean

Planning Commission
Judi Roland
Sunil Khanal

Transportation Advisory Board - Citizen at Large Position (1 of 3)
Peter Di Turi

AB 8432

Urban Tree Board
Bryce Landrud

White River Valley Historical Society
Ronnie Beyersdorf

Deputy Mayor DaCorsi moved and Councilmember Brown seconded to reappoint board and commission members to a three year term to expire on December 31, 2023.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Salary Commission - Reappointment Modification

Due to a clerical error, Mayor and City Council to approve the correction of Nancy Colson's term date from 12/31/2020 to 12/31/2021.

Deputy Mayor DaCorsi moved and Councilmember Jeyaraj seconded to approve the correction of Nancy Colson's term date from 12/31/2020 to 12/31/2021.

MOTION CARRIED UNANIMOUSLY. 7-0

E. Reappointments to Boards & Commissions

City Council to confirm the following reappointments to the Junior City Council for two-year terms expiring August 31, 2022:

- Waylon Menzia
- Jonathan Mulenga

Deputy Mayor DaCorsi moved and Councilmember Trout-Manuel seconded to approve the reappointments of Waylon Menzia and Jonathan Mulenga to the Junior City Council for a two year term expiring August 31, 2022.

MOTION CARRIED UNANIMOUSLY. 6-0

Councilmember Mulenga abstained.

V. AGENDA MODIFICATIONS

There were no modifications to the agenda.

VI. NEW BUSINESS

There was no new business.

VII. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

1. Public Hearing for the 2021 Community Development Block Grant Annual Action Plan

   City Council to hold Public Hearing for the proposed 2021 Annual Action Plan on December 7, 2020 at 7:00 p.m.

   Mayor Backus opened the public hearing at 7:18 p.m. No public comments were received, she closed the hearing.

B. Audience Participation

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

1. Virtual Participation

   Jeff Oliphant, PO Box 1294, Auburn
   Mr. Oliphant thanked the City staff for their assistance and creativity in seeing the 7-Eleven project from initiation to completion at the former Key Bank building.

   Bob Zimmerman, 33029 46th Place S, Auburn
   Mr. Zimmerman expressed concerns about City Staff, Council and Mayor when considering facts and fire codes.

C. Correspondence

There was no correspondence for Council to review.

VIII. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

   Councilmember Baggett, Chair of the Finance ad hoc committee, reported he and Councilmember Stearns have reviewed the claims and payroll vouchers described on the Consent Agenda this evening and recommended their approval.

IX. CONSENT AGENDA

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

A. Minutes of the August 23, 2016, November 14, 2020 and November 17, 2020 Special City Council Meeting

B. Minutes of the November 16, 2020 Regular Council Meeting

C. Minutes of the November 23, 2020 Study Session

D. Claim Vouchers (Thomas)

Claim voucher list dated December 7, 2020 which includes voucher numbers 461531 through 461762 in the amount of $3,357,391.97 and seven wire transfers in the amount of $811,660.27

E. Payroll Vouchers (Thomas)

Payroll check numbers 539002 through 539005 in the amount of $547,469.97, electronic deposit transmissions in the amount of $1,997,803.78, comp time cash out check numbers 539006 through 539047 in the amount of $86,138.18, and corresponding electronic deposit transmissions in the amount of $79,859.16, for a grand total of $2,708,271.09 for the period covering November 11, 2020 to December 1, 2020

Deputy Mayor DaCorsi moved and Councilmember Stearns seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 7-0

X. UNFINISHED BUSINESS

There was no unfinished business.

XI. ORDINANCES

A. Ordinance No. 6805 (Thomas)

An Ordinance amending Ordinances Nos. 6693 and 6694, the 2019-2020 Biennial Budget Ordinances, as amended by Ordinance No. 6712, Ordinance No. 6719, Ordinance No. 6720, Ordinance No. 6751, Ordinance No. 6752, Ordinance No. 6764, and Ordinance No. 6783, authorizing amendment to the City of Auburn 2019-2020 Budget as set forth in schedule “A” and schedule “B”

Councilmember Baggett moved and Councilmember Mulenga seconded to adopt Ordinance No. 6805.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Ordinance No. 6803 (Tate)

An Ordinance relating to planning; adopting 2020 Annual Comprehensive Plan Map and Text Amendments pursuant to the provisions of RCW Chapter 36.70A and adopting corresponding rezones related to certain map amendments

Councilmember Brown moved and Councilmember Jeyaraj seconded to adopt Ordinance No. 6803.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Ordinance No. 6804 (Tate)

An Ordinance amending Sections 19.02.115, 19.02.120, 19.02.130 and 19.02.140 of the Auburn City Code relating to School Impact Fees

Councilmember Jeyaraj moved and Councilmember Mulenga seconded to adopt Ordinance No. 6804.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Ordinance No. 6807 (Tate)

An Ordinance rezoning six parcels, approximately 37.1 acres, from R-20 Residential and R-7 Residential to R-16, Residential Zone – 16 dwelling units per acre, with certain conditions

Councilmember Stearns moved and Councilmember Trout-Manuel seconded to adopt Ordinance No. 6807.

MOTION CARRIED UNANIMOUSLY. 7-0

XII. **RESOLUTIONS**

A. Resolution No. 5544 (Gaub)

A Resolution authorizing the Mayor to execute an agreement with Sound Transit relating to the Regional Growth Center Access Improvements Project

Councilmember Mulenga moved and Councilmember Jeyaraj seconded to adopt Resolution No. 5544.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution No. 5564 (Hinman)

A Resolution authorizing the Mayor to amend a lease between the City of Auburn Airport and Normandy Aircraft.

Councilmember Brown moved and Councilmember Stearns seconded to adopt Resolution No. 5564.

MOTION CARRIED UNANIMOUSLY. 7-0

C. Resolution No. 5560 (Hinman)

A Resolution relating to an airport lease and authorizing the Mayor to negotiate and execute an Airport Office and Tie Down lease agreement with Classic Helicopter Corp

Councilmember Brown moved and Councilmember Stearns seconded to adopt Resolution No. 5560.

MOTION CARRIED UNANIMOUSLY. 7-0

D. Resolution No. 5562 (Hinman)

A Resolution authorizing the Mayor to negotiate and execute, on behalf of the City, an airport property lease with SpanaFlight LLC

Councilmember Jeyaraj moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5562.

MOTION CARRIED UNANIMOUSLY. 7-0

E. Resolution No. 5571 (Thomas)

A Resolution relating to the Auburn Food Bank's operation of the daytime resource center and authorizing the Mayor to negotiate, administer, and execute an agreement with the Auburn Food Bank

Councilmember Trout-Manuel moved and Councilmember Baggett seconded to adopt Resolution No. 5571.

MOTION CARRIED UNANIMOUSLY. 7-0

F. Resolution No. 5572 (Thomas)

A Resolution relating to the Auburn Food Bank's operation of the Night Shelter and authorizing the Mayor to negotiate, administer, and execute an agreement with the Auburn Food Bank

Councilmember Mulenga moved and Councilmember Baggett seconded to adopt Resolution No. 5572.

MOTION CARRIED UNANIMOUSLY. 7-0

XIII. MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

Deputy Mayor DaCorsi reported he attended the National League of Cities 2020 Summit Week and the Growth Management Policy Board Meeting.

Councilmember Trout-Manuel reported she attended the National League of Cities 2020 Summit Week, the Hispanic Elected Local Officials meeting, a Domestic Violence Task Force meeting, a Regional Law and Justice meeting and the Sound Cities Association meeting. She also recognized the Latino Unidos Club at Olympic Middle School for donating 44 boxes of food to Latio families for Thanksgiving.

Councilmember Mulenga reported she attended the Jolly Holiday Lane at Les Gove Park.

Councilmember Stearns reported he attended the Sound Cities Association Meeting, National League of Cities 2020 Summit Week and toured the Olson Creek Culvert.

Councilmember Jeyaraj reported he attended the Jolly Holiday Lane and thanked the Parks Department for hosting the event.

B. **From the Mayor**

Mayor Backus reported she attended the Senior Center Meals to Go and the Auburn Food Bank Thanksgiving drive through food donations, the Jolly Holiday Lane, the Tree Lighting Event at City Hall and toured the Blokable Units at Valley Cities.

XIV. **ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned a 8:10 p.m.

APPROVED this 21st day of December, 2020.

_____ _____

NANCY BACKUS, MAYOR Teresa Mattingly, Deputy City Clerk

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

AGENDA BILL APPROVAL FORM

Agenda Subject:
Claim Vouchers (Thomas)

Date:
December 9, 2020

Department:
Finance

Attachments:
No Attachments Available

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

Administrative Recommendation:

Approve Claim Vouchers.

Background Summary:

Claim voucher list dated December 21, 2020 which includes voucher numbers 461763 through 461952 in the amount of $5,002,555.77 and two wire transfers in the amount of $437,488.53.

Reviewed by Council Committees:

Councilmember:

Staff: Thomas

Meeting Date: December 21, 2020

Item Number: CA.C

AGENDA BILL APPROVAL FORM

Agenda Subject:
Payroll Vouchers (Thomas)

Date:
December 9, 2020

Department:
Finance

Attachments:
No Attachments Available

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

Administrative Recommendation:

Approve Payroll Vouchers.

Background Summary:

Payroll check numbers 539048 through 539053 in the amount of $75,214.24, manual payroll check numbers 10119 through 10126 in the amount of $11,374.70, and electronic deposit transmissions in the amount of $2,212,516.33, for a grant total of $2,299,105.27 for the period covering December 2, 2020 to December 15, 2020

Reviewed by Council Committees:

Councilmember:

Staff: Thomas

Meeting Date: December 21, 2020

Item Number: CA.D

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6790 (Gaub, Tate)

Date:
December 11, 2020

Department:
Public Works

Attachments:
Ordinance No. 6790
Ordinance No. 6790 Exhibits A-D

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

Administrative Recommendation:

City Council to adopt Ordinance No. 6790.

Background Summary:

Due to changes in Federal and State regulations that govern the regulation of utilities, telecommunications and cable facilities in the public ways, on city property and on private property, staff has determined that updates to the Auburn City Code related to the provisions for franchises, and finance and licensing of franchises for telecommunications, cable, and utilities are necessary.

Ordinance No. 6790 amends Chapters 3.42, 3.84, 3.88 and 5.84 of the Auburn City Code. Key changes to these Chapters are as follows:

- Align definitions with those in Title 20 for utilities, telecommunications, and cable.
- Modernize procedural provisions to reflect City process.
- Repeal of ACC 3.84.110 as the provision of notification for annexation is addressed by state law.
- Repeal of ACC 3.88.030 as the provision relating to Occupation License is outdated and duplicative of requirements in Title 5.
- Repeal of ACC 5.84.010 to remove the purpose statement for this Chapter as it is unnecessary and duplicative.

The proposed amendments or repealing of language to the Auburn City Code are also subject to review by the Washington State Department of Commerce and subject to the State Environmental Policy Act and were transmitted to those agencies for review in October 2020.

Ordinance No. 6790 authorizes amendments or repealing of language in Chapters 3.42, 3.84, 3.88 and 5.84 of the Auburn City Code as shown in Exhibits A through D of the Ordinance.

The City received comments from Industry representatives and either made revisions or provided clarification on intent of the code provisions to the Industry representatives prior to the Council's review of this Ordinance on November 23, 2020.

See Agenda Bill for Ordinance No. 6797, 6798, and 6799 for further information.

Reviewed by Council Committees:

Councilmember: **Staff:** Gaub

Meeting Date: December 21, 2020 Item Number: ORD.A

ORDINANCE NO. 6790

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO UPDATING THE PROVISONS FOR FRANCHISES, AND FINANCE AND LICENSING OF FRANCHISES FOR TELECOMMUNICATIONS, CABLE, AND UTILITIES CONSISTENT WITH CURRENT FEDERAL AND STATE REGULATIONS, AND AMENDING CHAPTERS 3.42, 3.84, 3.88, AND 5.84 OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn adopted Ordinance No. 5034 on January 5, 1998 enacting Title 20 entitled “Telecommunications and Other Commercial Utilities” pursuant to Federal and State regulations; and

WHEREAS, the City of Auburn adopted Ordinance No. 4625 on May 5, 1993 enacting Chapter 13.36 entitled “CATV Systems” pursuant to Federal and State regulations; and

WHEREAS, the City of Auburn adopted Ordinance No. 6170 on April 7, 2008 creating a new Chapter 3.42 of the Auburn City Code entitled Cable Television Utility Tax and amending Section 3.84.040 and 3.88.040 relating to the levy and collection of utility taxes for cable television, telephone and utility businesses operating within the corporate limits of the City; and

WHEREAS, the City of Auburn adopted Ordinance No. 5044 on January 5, 1998 creating a new Chapter 5.84 of the Auburn City Code relating to the procedures for application and approval of business licensing for utility and telecommunications businesses; and

WHEREAS, the City has made only minor updates as necessary throughout the entire Auburn City Code since the adoption of Ordinance Nos. 4625, 5034, 5044 and

6170 as it relates to the regulation, taxing and licensing of telecommunications, cable, and other utilities in the public ways and on city property or on private property; and

WHEREAS, due to changes in Federal and State regulations that govern the regulation of such industries and their presence within the City, it is necessary to update the Auburn City Code in all titles, chapters and sections that authorize, regulate, affect or otherwise govern the review, construction, placement and siting of such telecommunications, cable and other utility facilities in the public ways and on city property or on private property; and

WHEREAS, the City also seeks to clarify and update terms, procedural requirements and approval processes for permits, franchises, leases and licensing for telecommunications, cable and other utility facilities placed in the public ways, on city owned property or facilities, and on private property; and

WHEREAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to state agency review by the Washington State Department of Commerce on or about October 9, 2020; and

WHERAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to State Environmental Policy Act review and decision issued October 19, 2020.

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

Section 1. Amendment to City Code. Chapter 3.42 of the Auburn City Code is amended to read as shown in Exhibit A.

Section 2. **Amendment to City Code.** Chapter 3.84 of the Auburn City Code is amended to read as shown in Exhibit B.

Section 3. **Amendment to City Code.** Chapter 3.88 of the Auburn City Code is amended to read as shown in Exhibit C.

Section 4. **Amendment to City Code.** Chapter 5.84 of the Auburn City Code is amended to read as shown in Exhibit D.

Section 5. **Implementation.** The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

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

Section 7. **Effective date.** This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law, or on January 1, 2021, whichever is later.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____

ORDINANCE 6790
EXHIBIT A

Chapter 3.42
CABLE TELEVISION UTILITY TAX

Sections:

3.42.010 Tax created.
3.42.020 Levy and collection of tax.

3.42.010 Tax created.

There is created a utility tax in the amount of six percent to be levied as set forth below of the gross ~~receipts~~ revenues against and upon the total annual revenues of cable television businesses operating within the city. Gross Revenues for the purposes of calculating franchise fees shall be as set forth in any franchise agreement. (Ord. 6620 § 1, 2016; Ord. 6170 § 5, 2008.)

3.42.020 Levy and collection of tax.

There is levied a tax of six percent on the gross revenues ~~income~~ of, and upon the total annual revenues of, cable television businesses operating within the city, which tax shall be collected from and levied upon the total receipts of such cable television business(es). For the purposes hereof, the following terms and definitions shall apply:

A. "Gross revenues~~income~~" means the value proceeding or accruing from the sale of any tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials use, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Gross Revenues for the purposes of calculating franchise fees shall be as set forth in any franchise agreement. ~~property or service, and receipts (including all sums earned or charged,~~

~~whether received or not), by reason of the investment of capital in the business engaged in, including rentals, royalties, fees, or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses, including the amount of credit losses actually sustained by the taxpayer whose regular books or accounts are kept upon an accrual basis.~~

B. "Cable television business" means~~:~~

~~1. A~~ a system providing cable service pursuant to a franchise issued by the city under the Cable Communications Policy Act of 1984 Public Law No. 98-549, 47 U.S.C. Section 521, as it may be amended or superseded.~~; or~~

~~2. Any system that competes directly with such franchised system by employing antennas, microwaves, wires, wave guides, coaxial cables, or other conductors, equipment or facilities designed, construed or used for the purpose of:~~

~~a. Collecting and amplifying local and distant broadcast television signals and distributing and transmitting them;~~

~~b. Transmitting original cable-cast programming not received through television broadcast signals; or~~

~~c. Transmitting television pictures, film and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that "cable television service" shall not include entities that are subject to charges as "commercial TV stations" under 47 U.S.C. Section 158, as it may be amended or superseded.~~

C. The tax revenue generated by one percent levied pursuant to Ordinance No. 6170 shall be relegated for use by the city in support of its arterial street system. The tax revenue generated by the remaining five percent levied pursuant to Ordinance No. 6620 shall be relegated for use by the city in support of its police, public safety and criminal justice system. (Ord. 6620 § 2, 2016; Ord. 6170 § 5, 2008.)

ORDINANCE 6790
EXHIBIT B

Chapter 3.84
TELEPHONE BUSINESS

Sections:

3.84.010 Defined.
3.84.020 Competitive telephone service defined.
3.84.030 Business License – Required.
3.84.040 Tax – Imposed.
3.84.050 Tax – Payment schedule.
3.84.060 Tax – Deductions.
3.84.063 Allocation of income – Cellular telephone service.
3.84.065 Authority of administrator.
3.84.067 Rate change.
3.84.070 Records required.
3.84.080 Tax – Late penalty.
3.84.090 Credit and refund.
3.84.100 ~~Annexation notification.~~ Repealed
3.84.110 Constitutionality.
3.84.120 Regulation promulgation.
3.84.130 Applicable provisions.

3.84.010 Defined.

A. “Telephone business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, or similar communication or transmission system, and as more fully defined in RCW 82.04.065. It includes cooperative or farmer line telephone companies or associations operating an exchange. “Telephone business” does not

include the providing of competitive telephone service, nor the providing of cable television service, nor the providing of broadcast services by radio or television stations.

B. "Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. (Ord. 5673 § 2, 2002; Ord. 4722 § 1, 1994; Ord. 3679 § 4, 1981. Formerly 5.82.010.)

3.84.020 Competitive telephone service defined.

"Competitive telephone service" means the providing by any person of telecommunications equipment, apparatus, or service related to that equipment or apparatus, such as repair or maintenance services, 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 RCW, and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" in ACC 3.84.010 rather than "competitive telephone service." (Ord. 5673 § 2, 2002; Ord. 4722 § 2, 1994; Ord. 4594 § 2, 1992; Ord. 3679 § 4, 1981. Formerly 5.82.020.)

3.84.030 Business License – Required.

On and after January 1, 1982, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by ACC 3.84.040 without first having obtained, and being the holder of, a license ~~so~~ to do so,

to be known as ~~an occupation~~ a business license pursuant to Title 5 ACC. ~~Each such person, firm or corporation shall promptly apply to the Auburn business license clerk, as designated by the mayor, for such license upon such forms as the business license clerk shall prescribe, giving such information as the business license clerk shall deem reasonably necessary to enable the business license clerk's office to administer and enforce this chapter, and, upon acceptance of such application by the business license clerk, the business license clerk shall thereupon issue such license to the applicant. Such occupation license shall be personal and nontransferable and shall be valid as long as the licensee shall continue in the business and shall comply with this chapter.~~ (Ord. 5897 § 1, 2005; Ord. 5673 § 2, 2002; Ord. 3679 § 3, 1981. Formerly 5.82.030.)

3.84.040 Tax – Imposed.

On and after July 1, 2008, there is levied upon and there shall be collected from every person, firm or corporation engaged in carrying on the following business for hire or for sale of a commodity or a service within or partly within the corporate limits of the city, a tax for the privilege of so doing business as defined in ACC 3.84.010. Upon any telephone business there shall be levied a tax equal to six percent of ~~the total~~ gross ~~operating~~ revenues, including revenues from intrastate tolls derived from the operation of such business within the city. Gross Revenues for the purposes of calculating Franchise Fees shall be as set forth in any franchise agreement.~~Gross operating revenues for this purpose shall not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.~~ The increase in tax revenue generated by the additional one percent tax levied pursuant to Ordinance No. 6170 shall be relegated for use by the city in support of its arterial street system. It is provided, however, that if the state of Washington provides a long-term sustainable funding source to the city of Auburn arterial street fund in an amount sufficient to off-set the amount of the increases in utility tax rates of this chapter and the long-term funding source is sufficient to maintain the city of Auburn's arterial street system's pavement condition index (PCI) at an average of 70 PCI out

of a score of 100 PCI for the foreseeable future, the telephone utility tax rate shall automatically revert to five percent of the ~~total~~ gross ~~operating~~ revenues on telephone businesses, including revenues from intrastate tolls derived from the operation of such business within the city. (Ord. 6170 § 3, 2008; Ord. 5797 § 1, 2003; Ord. 5673 § 2, 2002; Ord. 4185 § 2, 1986. Formerly 5.82.040.)

3.84.050 Tax – Payment schedule.

The tax imposed by this chapter shall be due and payable in quarterly installments and remittance shall be made on or before the thirtieth day of the month next succeeding the end of the quarterly period in which the tax accrued. Such quarterly periods are as follows:

First quarter – January, February, March

Second quarter – April, May, June

Third quarter – July, August, September

Fourth quarter – October, November, December

The first payment made hereunder shall be made by April 30, 1982, for the three-month period ending March 31, 1982. On or before the due date the taxpayer shall file with the city clerk a written return, upon such form and setting forth such information as the clerk shall reasonably require, together with the payment of the amount of the tax. (Ord. 5673 § 2, 2002; Ord. 3679 § 5, 1981. Formerly 5.82.050.)

3.84.060 Tax – Deductions.

In computing the tax there shall be deducted from the gross ~~operating~~ revenues the following items:

A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;

B. A deduction from gross revenues~~income~~ shall be allowed, only to cellular telephone service companies which keep their regular books of account on an accrual basis, for the total amount of cash discounts and credit losses actually sustained by a taxpayer as a result of cellular telephone service business ~~which shall be phased in as follows: 20 percent of the credit losses occurring in 1995; 40 percent of the credit losses occurring in 1996; 60 percent of the credit losses occurring in 1997; 80 percent of the credit losses occurring in 1998; and a complete deduction for the credit losses occurring in 1999 and thereafter~~;

C. Amounts derived from transactions in interstate or foreign commerce or from any business which the city of Auburn, Washington, is prohibited from taxing under the Constitutions of the United States or the state of Washington;

D. Amounts derived by the taxpayer from the city of Auburn, Washington;

E. That portion of the gross revenues~~income~~ derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services;

F. Charges by a taxpayer engaging in a telephone business to a telecommunications company, as defined in RCW 80.04.010, for telephone service that the purchaser buys for the purpose of resale. (Ord. 5673 § 2, 2002; Ord. 4722 § 3, 1994; Ord. 3679 § 6, 1981. Formerly 5.82.060.)

3.84.063 Allocation of income – Cellular telephone service.

A. *Service Address.* Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

B. *Presumption.* There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

C. *Roaming Phones.* When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross revenues~~income~~ shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

D. *Dispute Resolution.* If there is a dispute between or among the city and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the city and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC. (Ord. 5673 § 2, 2002; Ord. 4722 § 4, 1994. Formerly 5.82.063.)

3.84.065 Authority of administrator.

The finance director is authorized to represent the city in negotiations with other cities for the proper allocation of taxes due under ACC 3.84.063. (Ord. 5673 § 2, 2002; Ord. 4722 § 5, 1994. Formerly 5.82.065.)

3.84.067 Rate change.

No change in the rate of tax upon persons engaging in providing cellular telephone service shall apply to business activities occurring before the effective date of the change and, except for a change in the tax rate authorized by RCW 35.21.870, no

change in the rate of the tax may take effect sooner than 60 days following the enactment of the ordinance establishing the change. The finance director shall send to each cellular telephone service company, at the address on its license, a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment. (Ord. 5673 § 2, 2002; Ord. 4722 § 6, 1994. Formerly 5.82.067.)

3.84.070 Records required.

Each taxpayer shall keep records reflecting the amount of their gross ~~operating~~ revenues, and such records shall be open at all reasonable times to the inspection of the city clerk, or duly authorized subordinates, for verification of the tax returns or for the fixing of the tax of a taxpayer who shall fail to make such returns. (Ord. 5673 § 2, 2002; Ord. 3679 § 7, 1981. Formerly 5.82.070.)

3.84.080 Tax – Late penalty.

If any person, firm or corporation subject to this chapter shall fail to pay any tax required by this chapter within 30 days after the due date thereof, there shall be added to such tax a penalty of 12 percent of the amount of such tax, and any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the city of Auburn, Washington, and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 5673 § 2, 2002; Ord. 3679 § 8, 1981. Formerly 5.82.080.)

3.84.090 Credit and refund.

Any money paid to the city of Auburn, Washington, through error or otherwise not in payment of the tax imposed or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer under this chapter or, upon the taxpayer's ceasing to do business in the city of

Auburn, Washington, be refunded to the taxpayer. (Ord. 5673 § 2, 2002; Ord. 3679 § 9, 1981. Formerly 5.82.090.)

3.84.100 Annexation notification. [Repealed].

~~Whenever the boundaries of the city of Auburn, Washington, are extended by annexation, all persons, firms and corporations subject to this chapter will be provided copies of all annexation ordinances by the first of the succeeding year. (Ord. 5673 § 2, 2002; Ord. 3679 § 10, 1981. Formerly 5.82.100.)~~

3.84.110 Constitutionality.

The invalidity or unconstitutionality of any provision or section of this chapter shall not render any other provision or section of this chapter invalid or unconstitutional. (Ord. 5673 § 2, 2002; Ord. 3679 § 11, 1981. Formerly 5.82.110.)

3.84.120 Regulation promulgation.

The city clerk is authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this chapter as shall be necessary, and it shall be a violation of this chapter to violate or to fail to comply with any such rule or regulation lawfully promulgated under this section. (Ord. 5673 § 2, 2002; Ord. 3679 § 12, 1981. Formerly 5.82.120.)

3.84.130 Applicable provisions.

The provisions of this chapter shall be subject to the provisions of ACC 3.88.060 through 3.88.100. (Ord. 5673 § 2, 2002; Ord. 3679 § 13, 1981. Formerly 5.82.130.)

ORDINANCE 6790
EXHIBIT C

Chapter 3.88
UTILITY SERVICES

Sections:

3.88.010 Exercise of revenue power.
3.88.020 Administration rules and regulations.
3.88.030 ~~Occupation license – Required – Application – Issuance~~.Repealed
3.88.040 Tax – Levy.
3.88.050 Tax – Exempt revenues.
3.88.060 Tax – Payment – Returns.
3.88.070 Revenue records.
3.88.080 Tax – Payment failure – Penalty and collection.
3.88.090 Tax – Overpayments.
3.88.100 Violation – Penalty.

3.88.010 Exercise of revenue power.

The provisions of this chapter shall be deemed to be an exercise of the power of the city to license for revenue. (Ord. 5673 § 3, 2002; 1957 code § 5.42.010. Formerly 5.88.010.)

3.88.020 Administration rules and regulations.

The city clerk is authorized to adopt, publish and enforce, from time to time, rules and regulations for the proper administration of this chapter, and it is unlawful to violate or to fail to comply with any such rule or regulation lawfully promulgated under this section. (Ord. 5673 § 3, 2002; 1957 code § 5.42.015. Formerly 5.88.020.)

3.88.030 ~~Occupation license – Required – Application – Issuance.~~Repealed

~~After January 1, 1956, no person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by ACC 3.88.040 without first having obtained and being the holder of a license so to do, to be known as an occupation license. Each such person, firm or corporation shall promptly apply to the business license clerk, as designated by the mayor, for such license upon such forms as the business license clerk deems reasonably necessary to enable them to administer and enforce this chapter, and, upon acceptance of such application by the business license clerk, they shall thereupon issue such license to the applicant. Such occupation license shall be personal and nontransferable and shall be valid as long as the licensee continues in said business and complies~~ with this chapter. (Ord. 5897 § 2, 2005; Ord. 5673 § 3, 2002; 1957 code § 5.42.020. Formerly 5.88.030.)

3.88.040 Tax – Levy.

On and after July 1, 2008, there is levied upon and there shall be collected from every person, firm or corporation engaged in carrying on an electric power business, natural gas business and/or artificial gas business for hire within or partly within the city limits an annual tax for the privilege of so doing, such tax to be equal to six percent of the total gross revenues received from the operation of such businesses within the city limits. The increase in tax revenue generated by the additional one percent tax levied pursuant to Ordinance No. 6170 shall be relegated for use by the city in support of its arterial street system. It is provided, however, that if the state of Washington provides a long-term sustainable funding source of to the city of Auburn arterial street fund in an amount sufficient to off-set the amount of the increases in utility tax rates of this chapter and the long-term funding source is sufficient to maintain the city of Auburn's arterial street system's pavement condition index (PCI) at an average of 70 PCI out of a score of 100 PCI for the foreseeable future, the electric power, natural gas business and artificial gas business utility tax rate shall automatically revert to five percent of the total gross revenues received from the operation of such businesses within the city limits. (Ord. 6170 § 4, 2008; Ord. 5797

§ 2, 2003; Ord. 5673 § 3, 2002; Ord. 4180 § 1, 1986; Ord. 3827 § 1, 1982; Ord. 3679 § 1, 1981; 1957 code § 5.42.030. Formerly 5.88.040.)

3.88.050 Tax – Exempt revenues.

In computing the annual tax there shall be deducted from the gross ~~operating~~ revenues the following items:

A. The amount of credit losses and uncollectibles actually sustained by the taxpayer;

B. Amounts derived from transactions in interstate or foreign commerce or from any business which the city is prohibited from taxing under the Constitutions of the United States or the state. (Ord. 5673 § 3, 2002; 1957 code § 5.42.040. Formerly 5.88.050.)

3.88.060 Tax – Payment – Returns.

The tax imposed by ACC 3.88.040 shall be due and payable quarterly on or before the last day of the month following the end of each quarterly period in each year, with the first quarterly payment payable on the last day in October, 1976. On or before the due date the taxpayer shall file with the city clerk a written return, upon such form and setting forth such information as the clerk shall reasonably require, together with the payment of the amount of the tax. (Ord. 5673 § 3, 2002; Ord. 3085 § 1, 1976; 1957 code § 5.42.050. Formerly 5.88.060.)

3.88.070 Revenue records.

Each taxpayer shall keep records reflecting the amount of its gross ~~operating~~ revenues, and such records shall be open at all reasonable times to the inspection of the city clerk, or their duly authorized subordinates, for verification of the tax returns or for the fixing of the tax of a taxpayer who fails to make such returns. (Ord. 5673 § 3, 2002; 1957 code § 5.42.060. Formerly 5.88.070.)

3.88.080 Tax – Payment failure – Penalty and collection.

If any person, firm or corporation subject to this chapter fails to pay any tax required by this chapter within 30 days after the due date thereof, there shall be added to such tax a penalty of ~~10~~ 12 percent of the amount of such tax, and any tax due under this chapter and unpaid, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. (Ord. 5673 § 3, 2002; 1957 code § 5.42.070. Formerly 5.88.080.)

3.88.090 Tax – Overpayments.

Any money paid to the city through error or otherwise not in payment of the tax imposed by this chapter or in excess of such tax shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer under this chapter or, upon the taxpayer's ceasing to do business in the city, be refunded to the taxpayer. (Ord. 5673 § 3, 2002; 1957 code § 5.42.080. Formerly 5.88.090.)

3.88.100 Violation – Penalty.

It shall be a misdemeanor punishable in accordance with ACC 1.24.010 for any person, firm or corporation subject to this chapter to fail or refuse to apply for an ~~occupation~~ business license or to make the tax returns or to pay the tax when due, or to make any false statement or representation in or in connection with any such application for an ~~occupation~~ business license or such tax return or otherwise violate or refuse or fail to comply with this chapter. (Ord. 5683 § 15, 2002; Ord. 5673 § 3, 2002; 1957 code § 5.42.090. Formerly 5.88.100.)

ORDINANCE 6790
EXHIBIT D

Chapter 5.84
LICENSING OF TELECOMMUNICATIONS CARRIERS, OPERATORS, PROVIDERS AND OTHER ~~COMMERCIAL~~ UTILITIES

Sections:

5.84.010 ~~Purpose of business licensing.~~Repealed
5.84.020 Definitions.
5.84.030 Business licensing required.
5.84.040 Business license fee.
5.84.050 General penalties.
5.84.060 Other remedies.
5.84.070 Fees and compensation not a tax.

5.84.010 ~~Purpose of business licensing.~~Repealed

~~The purpose of a business licensing is to:~~

~~A. Provide the city with accurate and current information concerning the commercial utility providers, cable operators, telecommunications carriers, operators and providers who offer or provide services within the city, or who own or operate facilities within the city's public ways;~~

~~B. Assist the city in enforcement of ACC Title 20;~~

~~C. Assist the city in the collection and enforcement of any municipal taxes, fees or charges that may be due the city; and~~

~~D. Assist the city in monitoring compliance with local, state and federal laws. (Ord. 5897 § 17, 2005; Ord. 5044 § 1, 1998.)~~

5.84.020 Definitions.

Except where specifically defined in this chapter, all words used in this title shall carry their customary meanings. For the purpose of this chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" shall mean the definition contained in ACC 20.02.020;~~means an entity which (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with franchisee. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent;~~

"Cable system~~facilities~~" shall mean the definition contained in ACC 20.02.020;~~means equipment and wiring used to transmit audio and video signals to subscribers;~~

"Cable operator" shall mean the definition contained in ACC 20.02.020;~~means a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the Cable Act and Chapter 13.36 ACC;~~

"Cable service" shall mean the definition contained in ACC 20.02.020;~~for the purpose of this chapter shall have the same meaning provided by the Cable Act and Chapter 13.36 ACC;~~

"City" means the city of Auburn, Washington as defined in ACC 1.04.010 to include all future areas annexed into the city;

~~"Commercial utility provider" means any natural gas, electric power, pipeline, or other company desiring to utilize city public ways for transporting, purveying, or delivering bulk products, or providing commercial power or gas services within the city, or needing to transport bulk product or services through the city to other destinations for commercial purposes;~~

"Person" shall mean the definition contained in ACC 20.02.020;~~means and includes corporations, companies, associations, joint stock companies or associations, firms,~~

~~partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;~~

"Public way(s)" shall mean the definition contained in ACC 20.02.020;

"Telecommunications carrier" shall mean the definition contained in ACC 20.02.020;~~means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or facilities within the city's public ways, for the purpose of offering telecommunications services within the city;~~

"Telecommunications facilities or system" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities, and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services; ~~the plant, equipment and facilities, including but not limited to cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services;~~

"Telecommunications operator" shall mean the definition contained in ACC 20.02.020;~~means and includes every person who provides telecommunications services within the city over telecommunications facilities located within the city's public ways, without any ownership, management or control of the facilities;~~

"Telecommunications provider" shall mean the definition contained in ACC 20.02.020;~~means and includes every person who utilizes facilities within the city's public ways to provide services outside the city only;~~

"Telecommunications service" shall mean the definition contained in ACC 20.020.020;~~means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.~~

"Utility provider" means any natural gas, electric power, pipeline, water or sewer not owned or operated by the City of Auburn, or other company desiring to utilize the public ways for transporting, purveying, or delivering bulk products, or providing power or gas services within the city, or needing to transport bulk product or services through the city to other destinations for commercial purposes. (Ord. 5044 § 1, 1998.)

5.84.030 Business licensing required.

No person, firm or corporation shall engage in or carry on any business, occupation, act or privilege for which a tax is imposed by ACC 3.84.040 or 3.88.040 without first having obtained, and being the holder of, a City of Auburn business license pursuant to Title 5 ACC.~~with the Auburn business license clerk. Each such person, firm or corporation shall apply to the Auburn business license clerk, as designated by the mayor, for such business license upon such forms as the business license clerk shall prescribe, giving such information as the business license clerk shall deem reasonably necessary to enable the business license clerk's office to administer and enforce this chapter, and, upon acceptance of such application by the business license clerk, the business license clerk shall thereupon issue such license to the applicant. Such business license shall be nontransferable and shall be valid as long as the licensee shall continue in the business and shall comply with this chapter.~~

All ~~commercial~~ utility providers, cable operators, telecommunication carriers, operators, and providers who offer or provide any ~~commercial~~ utility or telecommunications service for a fee directly to the public, either within the city, or outside the corporate limits from facilities within the city, shall, on an annual basis, apply for and obtain a business license from the city pursuant to this chapter on forms to be provided by the city, which shall include the following:

A. Business name, addresses and telephone numbers of the applicant, including business owner(s), partner(s), officer(s) and any affiliates, including the legal status of each.

B. The name, address, telephone number, and title of the officer, or registered agent responsible for the accuracy of the telecommunications business license application statement.

C. Business location, mailing address, street address, ~~and~~ telephone number, and email address if available.

D. A description of applicant's existing or proposed facilities within the city.

E. A description of the service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the city, or to those outside the city limits using facilities located within the city.

F. Information sufficient to determine whether the applicant is subject to the public way permitting and/or franchising requirements imposed by ~~ACC~~ Title 20 ACC and Chapter 12.24 ACC.

G. Information sufficient to determine whether the transmission, origination or receipt of the services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility tax or other occupation tax imposed by the city.

H. Alias or affiliate relationship such as "doing-business-as" (DBA) status of business. A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement.

I. Property tax ~~lot~~ parcel number, if applicable.

J. Business activity description.

K. Storage of hazardous materials (copy of Material Safety Data Sheet (MSDS) ~~sheet~~).

L. Washington State Unified Business Identifier (UBI)/tax registration number.

M. Federal ~~ID~~ tax identification number.

N. Washington State Labor and Industries contractor ~~ID~~ identification number.

O. Number of employees in city.

P. Emergency contacts available 24 hours daily, seven days a week. (Ord. 5897 § 18, 2005; Ord. 5044 § 1, 1998.)

5.84.040 Business license fee.

Each initial and all subsequent annual applications for business licenses for telecommunications carriers, operators, providers, or other ~~commercial~~ utility providers shall be accompanied by an application fee ~~of $25.00~~ as set forth in the city's adopted fee schedule for the purpose of reimbursing the city for administrative expenses associated with processing the application. (Ord. 5897 § 19, 2005; Ord. 5044 § 1, 1998.)

5.84.050 General penalties and enforcement.

A. Violations of this Chapter shall be enforced and penalized in accordance with Chapter 1.25 ACC. ~~*Civil Penalty.*~~

~~1. A violation of the provisions of this chapter is a civil infraction, punishable in accordance with ACC 1.25.050.~~

~~2. Each day of such violation constitutes a separate infraction under this chapter.~~

B. *Additional Relief.* ~~The city may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this chapter when penalties provided herein are inadequate to effect compliance. Furthermore, violation of the terms~~ Violations of this chapter shall be grounds for revocation of any public ways agreement, franchise, or lease issued or granted pursuant to ~~ACC~~ Title 20 ACC. (Ord. 5683 § 14, 2002; Ord. 5044 § 1, 1998.)

5.84.060 Other remedies.

Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter. (Ord. 5044 § 1, 1998.)

5.84.070 Fees and compensation not a tax.

The fees, charges and fines provided for in this chapter are separate from, and additional to, any and all federal, state, local, and city taxes as may be levied, imposed or due from a ~~commercial~~ utility provider, telecommunications carrier, operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of ~~commercial~~ utility or telecommunications services. (Ord. 5044 § 1, 1998.)

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6797 (Gaub, Tate)

Date:
December 11, 2020

Department:
Public Works

Attachments:
Ordinance No. 6797
Ordinance No. 6797 Exhibits A-C

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

Administrative Recommendation:

City Council to adopt Ordinance No. 6797.

Background Summary:

Due to changes in Federal and State regulations that govern the regulation of utilities, telecommunications and cable facilities in the public ways and on public property, staff has determined that updates to the Auburn City Code related to the provisions for franchises and construction and undergrounding requirements for telecommunications, cable and utilities are necessary.

Ordinance No. 6797 amends Chapters 12.24, 12.32 and 13.32A of the Auburn City Code. Key changes to these Chapters are follows:

- Align definitions with those in Title 20 for utilities, telecommunications and cable.
- Modernize procedural provisions to reflect City's process.
- Ensure that any construction work performed under these Chapters is done per the City's Engineering Design and Construction Standards.
- Update requirements, exemptions and process for undergrounding of utilities, telecommunications and cable.

The proposed amendments or repealing of language to the Auburn City Code are also subject to review by the Washington State Department of Commerce and subject to the State Environmental Policy Act and were transmitted to those agencies for review in October 2020.

Ordinance No. 6797 authorizes amendments or repealing of language in Chapters 12.24, 12.32, and 13.32A of the Auburn City Code as shown in Exhibits A through C of the Ordinance.

The City received comments from Industry representatives and either made revisions or provided clarification on intent of the code provisions to the Industry representatives prior to the Council's review of this Ordinance on November 23, 2020.

See Agenda Bill for Ordinance No. 6790, 6798, and 6799 for further information.

Reviewed by Council Committees:

Councilmember: Brown **Staff:** Gaub

Meeting Date: December 21, 2020 Item Number: ORD.B

ORDINANCE NO. 6797

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO UPDATING THE PROVISIONS FOR FRANCHISES, CONSTRUCTION, AND UNDERGROUNDING REQUIREMENTS FOR TELECOMMUNICATIONS, CABLE, AND UTILITIES CONSISTENT WITH CURRENT FEDERAL AND STATE REGULATIONS, AND AMENDING CHAPTERS 12.24, 12.32, AND 13.32A OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn adopted Ordinance No. 5034 on January 5, 1998 enacting Title 20 entitled “Telecommunications and Other Commercial Utilities” pursuant to Federal and State regulations; and

WHEREAS, the City of Auburn adopted Ordinance No. 4625 on May 5, 1993 enacting Chapter 13.36 entitled “CATV Systems” pursuant to Federal and State regulations; and

WHEREAS, the City of Auburn adopted Ordinance No. 5042 on January 5, 1998 creating a new Chapter 12.24 of the Auburn City Code entitled “Construction Permits” relating to the procedures for application and approval of construction permits within the public ways or on public property; and

WHEREAS, the City of Auburn created Chapter 12.32 of the Auburn City Code entitled “Sidewalk Obstructions” in 1957; and

WHEREAS, the City of Auburn adopted Ordinance No. 6238 on August 25, 2009 creating a new Chapter 13.32A of the Auburn City Code entitled “Underground Wiring” and amending certain section of Chapter 13.36 relating to undergrounding for cable facilities; and

WHEREAS, the City has made only minor updates as necessary throughout the entire Auburn City Code since the adoption of Ordinance Nos. 4625, 5034, 5042, and 6238 as it relates to the constructions, undergrounding, permitting and regulation of telecommunications, cable and other utilities in the public ways and on city and public property; and

WHEREAS, due to changes in Federal and State regulations that govern the regulation of such industries and their presence within the City, it is necessary to update the Auburn City Code in all titles, chapters and sections that authorize, regulate, affect or otherwise govern the review, construction, placement and siting of such telecommunications, cable and other utility facilities in the public ways and on city property or facilities; and

WHEREAS, the City also seeks to clarify and update terms, procedural requirements and approval processes for permits, franchises, leases and licensing for telecommunications, cable and other utility facilities placed in the public ways and on city owned property or facilities

WHEREAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to state agency review by the Washington State Department of Commerce on or about October 9, 2020; and

WHERAS, the proposed amendment and changes to the Auburn City Code that are the subject of this Ordinance were also subject to State Environmental Policy Act review and decision issued October 19, 2020.

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

Section 1. Amendment to City Code. Chapter 12.24 of the Auburn City Code is amended to read as shown in Exhibit A.

Section 2. Amendment to City Code. Chapter 12.32 of the Auburn City Code is amended to read as shown in Exhibit B.

Section 3. Amendment to City Code. Chapter 13.32A of the Auburn City Code is amended to read as shown in Exhibit C.

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, or on January 1, 2021, whichever is later.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Kendra Comeau, City Attorney

Published: _____

ORDINANCE 6797
EXHIBIT A

Chapter 12.24
CONSTRUCTION PERMITS

Sections:

12.24.010 Required.
12.24.020 Applications.
12.24.030 Engineer of record.
12.24.040 Traffic-control plan.
12.24.050 Performance bond.
12.24.060 Permit – Fee.
12.24.070 Construction codes.
12.24.080 Decision – Permit term.
12.24.090 Contest of city engineer's decision.
12.24.100 Compliance with permit.
12.24.110 Display of permit.
12.24.120 Survey of underground facilities.
12.24.130 Noncomplying work.
12.24.140 Record drawings.
12.24.150 Restoration after construction.
12.24.160 Standards for construction.
12.24.170 Permittee's liability.
12.24.180 Release of construction surety.
12.24.190 Violation – Penalty.
12.24.200 Responsibilities of the owner.

12.24.010 Required.

All persons, including, but not limited to, franchise utilities, corporations, firms, companies, individuals, government agencies or officials, or any organization of any

kind, who propose to install overhead or underground facilities, perform construction, or excavate in the public way~~into the surface of any city street, sidewalk or curb, or make any excavation through or underneath any city street, sidewalk or curb, in any street or alley in the city, or across city or public property~~, must obtain a construction permit to do so from the city engineer prior to any proposed work. Use of, or construction on city property requires a lease, license, or city authorization. ~~In the event of any conflict, r~~Regarding the following: 1) permitting of any work within ~~city~~ the public ways and 2) lease, license, or authorization by the city for use or construction on city property, in the event of any conflict ~~or city easements,~~ with any other chapter of this code, the procedures set forth in this chapter shall take precedence.

A. Prior to applying for a permit for construction or installation of facilities within the ~~city's~~ public ways the applicant will obtain any business ~~registration~~license~~,~~ and/or franchise~~, and/or right-of-way agreement~~ required in accordance with ~~ACC~~ Titles 5 and 20 ACC.

B. Prior to applying ~~for a permit~~ for use of or the construction of approved facilities on city-owned or public property the applicant shall obtain a facilities lease or license agreement from the city in accordance with ~~ACC~~ Title 20 ACC. The city council reserves unto itself the sole discretion to lease city property for any purpose, and no vested or other rights shall be created by this section or any provision of this chapter applicable to such facilities leases.

C. This chapter does not apply to utility permits issued under ~~ACC~~ Title 13 ACC. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.020 Applications.

Applications for construction permits shall be submitted to the city engineer upon forms to be provided by the city and shall be accompanied by drawings, plans, specifications, performance bond valued at 125 percent of the estimated cost of work

including landscape and restoration work anticipated, and a brief narrative description of the project scope in sufficient detail to demonstrate:

A. The identity of the applicant, including all affiliates of the applicant;

B. A description of the services that are or will be offered or provided by the applicant to others;

C. Preliminary engineering plans, specifications and a network map of the facilities to be located within the city, all in sufficient detail to identify:

1. The location and route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunications, cable, water, sewer drainage and other facilities in the public way along the proposed route;

3. The location(s), if any, for interconnection with the facilities of other carriers;

4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

5. The location of all facilities to be constructed within or immediately adjacent to the public ways on private property. Where use of private property is involved proof of easements will be required prior to permit issuance;

6. The location of all survey monuments which may be displaced or disturbed by the proposed construction;

7. In addition to the other requirements stated herein, the city engineer may require the plans to conform to general plan requirements as specified in the Engineering Design Standards, including the requirement that the plans are stamped by a profession engineer licensed in the State of Washington.

D. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing utility poles along the proposed route;

E. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

1. The excess capacity currently available in such ducts or conduits before installation of applicant's facilities;

2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities; and

3. Evidence of ownership or a right to use such ducts or conduits;

F. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

1. The location proposed for the new ducts or conduits; and

2. The excess capacity that will exist in such ducts or conduits after installation of applicant's facilities;

G. A preliminary construction schedule and completion date;

H. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the services proposed, including, but not limited to, evidence that the applicant has registered the Washington Utilities and Transportation Commission where applicable;

I. A permit fee as determined in ACC 12.24.060;

J. Proof of ability to meet city's bonding requirements as set forth in ACC 12.24.050 when the permittee does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed; and

K. Demonstration that the facilities will be constructed in accordance with city standards and all other applicable codes, rules and regulations. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.030 Engineer of record.

Permit applications shall be accompanied by drawings, plans and specifications and identification of the name, telephone number, and address of the engineer having responsible charge of the scope of work covered by the permit. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.040 Traffic-control plan.

All permit applications which involve work on, in, under, across, or along any public ways shall be accompanied by a traffic-control plan demonstrating the protective measures and devices that will be employed, consistent with the latest edition of Manual on Uniform Traffic-Control Devices (MUTCD), as adopted by the Model Traffic Ordinance (ACC 10.04.010) and RCW 47.36.020 to prevent injury or damage to persons or property and to minimize disruptions to pedestrian and vehicular traffic. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.050 Performance bond.

All performance bonds for work in public ways shall satisfy the minimum standards established in the city's ~~standard specifications~~Engineering Design and Construction Standards as adopted in Chapter 12.04 ACC. Unless otherwise provided in a ~~right-of-way agreement,~~ permit, franchise, or lease agreement, a performance bond written by a corporate surety acceptable to the city equal to at least 125 percent of the estimated cost of removing the ~~grantee's,~~ permittee's, franchisee's, or lessee's equipment and facilities and restoring the public ways ~~of the city~~ and/or city-owned property to its substantially equivalent preconstruction condition shall be deposited before any construction is commenced. Said bond shall be required to remain in full force until 60 days after completion of the construction and/or improvements within the public ways ~~of the city~~ or upon city-owned property as determined by the city engineer, and shall warrant all such restoration work for a period of one year by reduction to an amount approved by the city engineer in the approximate amount of

10 percent of the original value of the performance bond during the period of warranty. The purpose of this bond is to guarantee removal of partially-completed work and/or nonconforming facilities, to fully restore the public ways ~~of the city~~ and city-owned property to its substantially equivalent preconstruction condition, and/or to cover unexpected deterioration of pavement structures precipitated by the ~~grantee's~~ permittee's, franchisee's, or lessee's work, and any other permitting requirements established in the permit as required by the city engineer. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.060 Permit – Fee.

A. The city engineer shall have charge of issuing construction permits to all persons upon the application for the permit to perform any work within the ~~city's~~ public ways, ~~easements, or upon city or public property~~. ~~The city engineer shall provide application forms to be completed by each applicant.~~ Prior to permit issuance, the city engineer or designee shall assure that a fee for the permit is deposited with the finance department.

The fees shall be as shown in the ~~c~~City of Auburn adopted fee schedule ~~as adopted by Ordinance 5707, and any amendments thereto~~.

B. The permit fee will be collected at the time the permit is issued or other time as may be established by the city engineer. Upon approval of the application by the city engineer, a permit will be issued to the person paying for the permit. (Ord. 5817 § 4, 2004; Ord. 5042 § 1 (Exh. C), 1998.)

12.24.070 Construction codes.

All construction within ~~city~~ public ways or easements shall comply with the city's Engineering Design and Construction Standards~~street standards~~ as established in Chapter 12.04 ACC. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.080 Decision – Permit term.

After submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the city will determine whether the applications, plans and documents comply with all requirements of this chapter. Once all city requirements are met the city shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the schedule, place and manner of performing the work as may be necessary or appropriate in the interest of public safety or welfare. The permit to be issued by the city engineer shall be valid only for the time designated on the permit. The city engineer shall designate the length of time that the permit shall be valid at the time the permit is issued. The city engineer shall exercise their discretion and shall have the sole power to decide whether or not a permit shall be issued at that time, providing that the decision of the city engineer may be changed by the city council upon the review of the merits of a complaint of any person being denied such a permit.

If the applicant does not take action in good faith, the application will be considered abandoned after 180 days of non-action. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.090 Contest of city engineer's decision.

Any person aggrieved by the granting or denying of a construction permit pursuant to this chapter shall have the right of review by the public works director as follows:

A. All complaints filed pursuant to this section must be filed in writing with the public works director within 10 working days of the date of the decision being contested;

B. All complaints filed pursuant to this section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the city engineer's decision, which shall constitute the basis of the complaint;

C. Upon receipt of a timely written notice of complaint, the public works director shall review the materials submitted and determine whether to uphold or modify the

city engineer's decision. If, in the public works director's judgment, the city engineer's decision should be amended in favor of resolving the complaint, they shall so direct the same. If the director upholds the city engineer's decision, they shall prepare a written staff paper detailing the rationale of the city engineer's decision and findings of fact for conduct of a hearing by the hearing examiner;

D. The public works director shall schedule the hearing before the hearing examiner in accordance with Chapter 2.46 ACC and notify the contesting party of the scheduled hearing in accordance with ACC 18.70.040. (Ord. 6442 § 6, 2012; Ord. 5677 § 4, 2002; Ord. 5042 § 1 (Exh. C), 1998.)

12.24.100 Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city shall be provided access to the work and such further information as may be required to ensure compliance. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.110 Display of permit.

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the city inspector at all times when construction work is occurring. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.120 Survey of underground facilities.

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a state-registered land surveyor. The permittee may

be required to relocate any facilities which are not located in compliance with permit requirements at permittee's expense. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.130 Noncomplying work.

Upon order of the city engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the city's ~~standards and requirements~~Engineering Design and Construction Standards as established in Chapter 12.04 ACC shall be remedied to comply with standards or removed at permittee's expense. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.140 Record drawings.

Within ~~6~~30 days after completion of construction ~~or in accordance with a separate agreement with the city engineer,~~ the permittee shall furnish the city with ~~a computer disc with~~ record construction drawings in accordance with the city Engineering Design and Construction Standards. ~~Autocadd drawing file format and a complete set of plans, drawn to scale and certified to the city as accurately depicting the horizontal and vertical location and configuration of all facilities constructed pursuant to the permit. The city engineer shall have the discretion to prescribe the format and/or media of said record drawings, consistent with city codes and policies.~~ (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.150 Restoration after construction.

Upon completion of any construction, maintenance, or repair work, the permittee shall promptly repair any and all public and private property improvements, landscaping, fixtures, structures, and facilities in the public or other ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction, except pavement restoration and pedestrian facility upgrade requirements for ADA compliance, which

both shall be restored and/or upgraded per the Engineering Design and Construction Standards. All survey monuments disturbed or displaced shall be referenced and replaced as required by Chapter 332-120 WAC and the Engineering Design and Construction Standards~~Auburn benchmark system second order, first class specifications~~. The referencing and replacement of survey monuments shall be performed by a licensed land surveyor. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair, or replacement performed by the permittee shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work. The city engineer or designee shall have final approval of the completeness of all restoration work. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.160 Standards for construction.

All work within the public ways will comply with the Engineering Design and Construction Standards. The additional terms under which the construction and/or the repair thereof are to be made by the permittee shall be stated and printed on the permit. The city will inspect the construction site before and after the construction to assure the permittee has completely repaired the area to the satisfaction of the city. Any person or persons who fail to comply with the city's permit by not completing repairs thereof in accordance with the requirements of the city shall not be granted any further permits requested in future applications until such time as the repairs and restoration are completed to the city's satisfaction or, if approved by the city engineer, the cost of the proper repair and restoration ~~or construction~~ has been fully paid for by the permittee. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.170 Permittee's liability.

Any person regulated under this chapter shall be liable to the city for all losses or damages claimed by any persons as a result of the negligence or failure of the person securing a permit to take all necessary precautions to protect the public and

the city in the performance of any construction activities. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.180 Release of construction surety.

Upon completion of work and associated restoration work and payment of all fees to the satisfaction of the city engineer or designee, the performance bond will be released. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.190 Violation – Penalty.

Any violation of this chapter shall be enforced pursuant to the provisions of Chapter 1.25 ACC. (Ord. 5042 § 1 (Exh. C), 1998.)

12.24.200 Responsibilities of the owner.

The owner of the facilities to be constructed and, if different, the ~~grantee,~~ franchisee~~,~~ or lessee is responsible for performance of and compliance with all provisions of this chapter. (Ord. 5042 § 1 (Exh. C), 1998.)

ORDINANCE 6797
EXHIBIT B

Chapter 12.32
SIDEWALK OBSTRUCTIONS

Sections:

12.32.010 Sidewalk use restriction.
12.32.020 Prohibitions.
12.32.030 Prohibition exemptions.
12.32.040 Building code provisions apply.
12.32.050 Violation – Penalty.

For statutory provisions authorizing third-class cities to manage and control sidewalks and to remove obstructions therefrom, see RCW 35.24.290(3); for provisions granting a code city all powers of any city of any class, see RCW 35A.21.160.

12.32.010 Sidewalk use restriction.

All sidewalks in the public streets, alleys and places in the city, for the full width thereof, are exclusively for the use of pedestrians, and shall be used for no other purpose whatsoever except as hereinafter provided and except for the use of bicycles. (Ord. 2983 § 1, 1976; 1957 code § 8.18.010.)

12.32.020 Prohibitions.

It is unlawful for any person, firm or corporation, or for any agent, representative, servant or employee thereof, to deposit, place, erect or maintain, or cause to be deposited, placed, erected or maintained, upon any sidewalk located in any public street, alley or place of the city, or upon any portion of such sidewalk, any bench,

chair, rack, stand, structure, sign, merchandise or other object, except as approved by the city engineer, or to place, erect or maintain, or cause to be placed, erected or maintained, over such sidewalk, or over any portion of such sidewalk, any structure, sign or other object at such height or in such manner as to prevent or interfere with the free and unobstructed use of all of such sidewalk by pedestrians. (Ord. 6532 § 16, 2014; 1957 code § 8.18.020.)

12.32.030 Prohibition exemptions.

The provisions of this chapter shall not prohibit the placing or maintaining of signs, notices or orders of the city council or the police department of the city, ~~or the placing and maintaining of flags of the United States of America or the state, or the placing and maintaining of ornamental tree planters on sidewalks near the curb by or under the direction of the chief of police or the city council,~~ nor shall the provisions of this chapter prohibit the expeditious moving of freight and merchandise in the loading or unloading thereof, across sidewalks, if such is done with the least possible obstruction to the free use of such sidewalks by pedestrians pursuant to a franchise or permit~~; provided, further, that the city council may by resolution allow certain designated persons, firms or corporations to utilize the public sidewalks of the city for additional purposes for specified periods of time, pursuant to a franchise or permit, after review and recommendation thereon by the public works department and after approval thereof by a majority of the city council; provided further, that such use will not substantially interfere with the use of such sidewalk by pedestrians.~~ (1957 code § 8.18.030.)

12.32.040 Building code provisions apply.

This chapter is subject to the provisions of Title 15 ACC.~~Part IX, Sections 4401 through 4406 of the Uniform Building Code, 1973 Edition, pertaining to regulations for use of public streets and projections over public property, and more particularly pertaining to protection of pedestrians during construction or demolition. It is the~~

~~intent of the city council in passing the ordinance codified in this section that the latter portions of the 1973 Edition of the Uniform Building Code shall prevail in case of any conflict with the provisions of this chapter.~~ (Ord. 2984 § 1, 1976; 1957 code § 8.18.050.)

12.32.050 Violation – Penalty.

Any violation of this chapter shall be enforced pursuant to the provisions of Chapter 1.25 ACC. (Ord. 4502 § 5, 1991; 1957 code § 8.18.040.)

ORDINANCE 6797
EXHIBIT C

Chapter 13.32A
UNDERGROUND WIRING

Sections:

13.32A.010 Scope.
13.32A.020 Exceptions.
13.32A.030 Definitions.
13.32A.040 Temporary aerial services.
13.32A.050 Requirements – New utility distribution facilities.
13.32A.060 Requirements – Existing utility aerial distribution facilities.
13.32A.070 Requirements – New utility service connections.
13.32A.080 Permitting.
13.32A.090 Joint trenches.
13.32A.110 Financial responsibilities – Private development.
13.32A.120 Deferral of underground distribution facilities.
13.32A.130 City project process and requirements.
13.32A.140 Local improvement regulations apply.
13.32A.150 Authority.
13.32A.160 Violation – Penalty.

13.32A.010 Scope.

A. It is found and determined by the city that the general necessity, convenience, health, safety and welfare require that electrical and telecommunication utility facilities be constructed underground in an orderly manner in accordance with the requirements specified in this chapter.

B. The scope of this chapter is to provide policies and standard procedures for regulation of installation, operation, and management of all aerial and underground utility wiring and conduits within the city of Auburn.

C. This chapter shall apply to all electrical and telecommunication utility facilities, including but not limited to power, telephone and cable television facilities, within the corporate city limits; provided, however, the facilities identified in ACC 13.32A.020 are ~~excepted~~ exempt from the undergrounding requirements of this chapter.

D. This chapter clarifies the applicability of all other titles, and all other chapters of this title, of the Auburn City Code regarding the subject of undergrounding, to foster management of city rights-of-way to the benefit of the public, and to prescribe the specific procedures and permits to be used to regulate each activity.

E. All improvements subject to this chapter shall also meet the requirements of the engineering design and construction standards of the city.

F. In addition to the provisions of this chapter, Chapter ~~13.36~~20.06 ACC, ~~CATV Systems~~Cable Franchises, also governs the installation and management of all underground facilities related to cable television services and franchises within the corporate boundaries of the city.

G. In addition to the provisions of this chapter, ~~ACC~~ Title 20 ACC, ~~Telecommunications and Other Commercial Utilities~~Franchises, Cable Franchises and Leases, also governs the installation and management of all underground facilities related to ~~commercial~~ utilities and telecommunication services and Chapter 12.24 ACC, Construction Permits, also governs ~~right-of-way agreements,~~ franchises~~,~~ and leases within the corporate boundaries of the city.

H. In the event of a conflict between the provisions of this chapter and other portions of the Auburn City Code, the provisions of this chapter shall control. (Ord. 6238 § 2, 2009.)

13.32A.020 Exceptions.

With the approval of the city engineer, the following utility facilities are exempt from the undergrounding requirements of this chapter:

A. Electric utility substations, pad mounted transformers and switching facilities not located on the public ~~right-of-~~way and authorized through existing or future site-specific development approvals;

B. Electric aerial transmission facilities of a voltage of more than 15,000 volts, including poles, wires, and associated facilities;

C. Street lighting and traffic control equipment as determined necessary by the city engineer;

D. Telecommunication pedestals and other equivalent telecommunication facilities including those parts of Wireless Communications Facilities which by their nature cannot function underground;

E. Temporary aerial utility services for construction that will be removed immediately upon completion of construction; and

F. New facilities installed on existing poles with other aerial facilities attached, except if the existing attached aerial facilities consist only of electric transmission facilities of a voltage of more than 15,000 volts in which case the new facilities are not exempt unless other exemptions listed in this chapter apply.~~A franchisee is expanding its existing aerial system as a secondary tenant on an existing aerial system not related to a new private development project where the undergrounding of the expansion will not eliminate the existing aerial system.~~ (Ord. 6520 § 1, 2014; Ord. 6238 § 2, 2009.)

These exemptions do not affect the obligation for any facility to relocate when required to do so by any section of the ACC.

13.32A.030 Definitions.

The definitions of this chapter are specific to this chapter.

A. “Aerial” means those utility facilities which currently exist on poles, or which may be installed on poles within city rights-of-way or city utility easements at a future date with the city engineer’s approval.

B. “Applicant” means the owner or owners of record of the property, or facility owner pursuing the development or redevelopment of property within the jurisdiction of the city.

C. “Conduit” means any pipeline, duct, or protective enclosure used for electrical conductors, coaxial cable, multiconductor cable, or fiber optic cable, telecommunications trunkline or used for conveyance of gas, petroleum, or other commercial products.

D. “Conversion” means a project being performed by the city to convert an area of existing aerial utility facilities to underground facilities.

E. “Conversion area” means the area that has been identified by the city in relation to a city project that will be requiring the aerial utility systems to be undergrounded, including all affected utility customers.

F. “Electric utility” means any utility engaged in the business of furnishing electric energy to the public and includes electric companies as defined by RCW 80.04.010 and public utility districts.

G. “Permanent structure” means any commercial, industrial or residential structure that is greater than 120 square feet and is on a fixed foundation including but not limited to uses such as offices, businesses, warehouses, homes, garages, barns, and storage buildings.

~~H. “Power distribution facilities” means those electrical utility facilities of less than 15,000 volts that provide direct service to customers and are not considered transmission systems.~~

~~I~~H. “Service connection” means utility facilities extending from a ~~distribution~~ utility system and terminating on private property to serve a customer or subscriber.

~~J~~I. “Telecommunications” is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means, including but not limited to telephone, cable television, and data transmission services. As used in this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

~~K. “Telecommunication utility” means any utility engaged in the business of affording telecommunications services to the public in all or part of the conversion area.~~

~~L. “Temporary structure” means a structure that is 120 square feet or less in size, mobile in nature and will be removed from the site within the time frame allowed for temporary aerial services.~~

~~M~~K. “Utility or Utilities” means those companies providing electric power, cable, or telecommunications services within the corporate boundaries of the city of Auburn, Washington.

~~N~~L “Utility facility” shall mean the definition contained in ACC 20.02.020.~~means any and all utility-owned or operated conduits, wires, cables, fiber optics, or other devices used to transmit, transport, or distribute electric power or telecommunications services, and any appurtenances thereto.~~ (Ord. 6238 § 2, 2009.)

13.32A.040 Temporary aerial services.

The city engineer may allow utility service connections for permanent structures to be temporarily located aerially for up to 180 calendar days,~~.~~ and may grant an additional ~~Extensions~~ extension not to exceed ~~beyond the~~ 180 calendar days for temporary aerial service connections for permanent structures. ~~may be authorized by the public works committee of the city council; such~~ Such authorizations may include financial securities or other instruments to ensure the conversion of the aerial system to an

underground system by the end of the extension period authorized. (Ord. 6238 § 2, 2009.)

13.32A.050 Requirements – New utility ~~distribution~~ facilities.

Unless exempted by ACC 13.32A.020 ~~All~~ all new utility ~~distribution~~ facilities shall be underground. The installation of all new utility facilities for subdivisions shall also meet the requirements identified in Chapter 17.14 ACC. (Ord. 6238 § 2, 2009.)

13.32A.060 Requirements – Existing ~~utility~~ aerial utility ~~distribution~~ facilities.

A. Any applicant triggering the requirement for public improvements per Chapter 12.64A ACC shall be responsible for converting all non-exempt aerial facilities on the parcel(s) associated with the permitted actions to underground unless ~~All existing utility aerial distribution facilities shall be undergrounded in connection with new private development unless~~any ~~one~~ of the following criteria is met:

1. ~~The city engineer determines that undergrounding of the portion of the existing aerial facilities along the development's street frontage would require undergrounding portions of the aerial distribution facilities extending beyond the development's street frontage unless an additional extension of no more than 50 feet of the underground system is needed on either end of the street frontage to connect to logical points of the existing utility system~~The development is a single family residence on a platted lot; or

2. The development is the conversion of one single-family residence to a commercial use as defined in the R-O, ~~residential~~ Residential ~~office~~ Office zoning district, Chapter ~~18.22~~ 18.35 ACC; or

3. The development is a new commercial development on a lot that is 11,000 square feet or smaller in area and located in the RO, DUC, CN, C-1, C-2, or C-3 zone; or

4. The development is wholly interior improvements to an existing building; or

5. The development is an addition, alteration or repair of an existing building structure, where the building permit valuation per ~~ACC 15.07.080~~Chapter 15.07 ACC is less than 50 percent of either:

a. The assessed value of the existing building structure(s) on the subject property as determined by the most current property assessment by the county assessor of the county in which the property is located; or

b. The value of the existing building structure(s) as determined by an appraisal performed by an MAI appraiser certified by the state of Washington, which appraisal shall be paid for and provided by the property owner.

B. Repairs to an existing utility aerial service facility may be made aerially.

C. For city projects, ~~the city council shall determine whether the~~ undergrounding of existing aerial utility ~~distribution~~ facilities shall be ~~required in association with the city project~~as identified in the Capital Facilities Plan. (Ord. 6238 § 2, 2009.)

13.32A.070 Requirements – New utility service connections.

All new utility service connections shall be underground unless one of the following criteria is met:

A. The existing ~~distribution~~ utility system and any service connections serving the customer or subscriber are aerial and the building, structure, or facility to be served is new construction, an addition, alteration, or repair where the building permit valuation per ~~ACC 15.07.080~~Chapter 15.07 ACC is under $20,000 in value.

B. The installation of a new or replacement service connection in an area where the existing utility ~~distribution~~ facility and/or existing service connection is aerial and meeting at least one of the following criteria:

1. The construction of a single-family residence on an existing platted lot or the addition of an accessory dwelling unit on an existing residential lot; or

2. The conversion of one single-family residence to a commercial use as defined in the residential office zoning district, Chapter ~~18.22~~18.35 ACC; or

3. A new commercial development on a lot that is 11,000 square feet or smaller in area and located in the RO, DUC, CN, C-1, C-2 or C-3 zone; or

4. Wholly interior improvements made to an existing building; or

5. For existing building structures, where the building permit valuation per ~~ACC 15.07.080~~Chapter 15.07 ACC of an addition, alteration, or repair to the existing structure is less than 50 percent of either:

a. The assessed value of the existing building structure(s) on the subject property as determined by the most current property assessment by the county assessor of the county in which the property is located; or

b. The value of the existing building structure(s) as determined by an appraisal performed by an MAI appraiser certified by the state of Washington, which appraisal shall be paid for and provided by the property owner. (Ord. 6238 § 2, 2009.)

13.32A.080 Permitting.

All permits for the installation of aerial and underground utility facilities within existing ~~city rights-of-way~~public ways or easements shall be processed and reviewed under Chapter 12.24 ACC, Construction Permits. (Ord. 6238 § 2, 2009.)

13.32A.090 Joint trenches.

Where several underground utilities are planned or required in the same alignment, the utilities shall use a joint trench for such facilities unless demonstrated to the

satisfaction of the city engineer that a joint trench is not feasible. (Ord. 6238 § 2, 2009.)

13.32A.110 Financial responsibilities – Private development.

For private development, the cost of constructing new underground utility facilities, or relocating existing aerial facilities underground, shall be borne by the serving utilities, the owners of the real property to be served or others requesting such underground services in accordance with the applicable filed tariffs or the rules and regulations or the published policies of the respective utilities furnishing such service or as may be contractually agreed upon between the utility and such owner or applicant.

In addition, all such conversion of electric and telecommunication utility facilities to underground facilities may be undertaken by local improvement district or as otherwise permitted by applicable law and as further authorized by RCW 35.96.030 and 35.96.040. (Ord. 6238 § 2, 2009.)

13.32A.120 Deferral of underground ~~distribution~~ utility facilities.

A. The city engineer may grant a deferral for some or all of the undergrounding of utility ~~distribution~~ facilities otherwise required pursuant to this chapter following the procedures identified in ACC 12.64A.050, Deferral and fee in lieu of improvements. The city engineer's decision regarding such a deferral will be based on meeting the following criteria rather than those listed in ACC 12.64A.050:

1. There is a pending city six-year TIP project or an adjacent developer planned project which would affect the proposed area of undergrounding of the existing aerial facilities; or

2. A franchisee is expanding its existing aerial system as a secondary tenant on an existing aerial system for the purpose of serving a new private development where the undergrounding of the expansion will not eliminate the existing aerial system; or

3. All of the following conditions are met:

a. There are other properties abutting or across the street from the subject property that have aerial utility facilities; and

b. The establishment or continuation of aerial utility facilities for the period of the deferral will not adversely affect or delay other properties that may have to provide or convert to undergrounding utility improvements within the public ~~right-of-~~way; and

c. There are technological difficulties associated with converting to or providing undergrounding utility improvements for the subject property as demonstrated to the satisfaction of the city engineer; or.

4. The city engineer determines that undergrounding of the portion of the existing aerial facilities along the development's street frontage would require undergrounding portions of the aerial facilities extending beyond the development's street frontage unless an additional extension of no more than 50 feet of the underground system is needed on either end of the street frontage to connect to logical points of the existing utility system.

B. An applicant whose request has been denied may appeal the denial following the procedure as identified in ACC 12.64A.060, Appeal and enforcement. (Ord. 6520 § 2, 2014; Ord. 6238 § 2, 2009.)

13.32A.130 City project process and requirements.

A. *City Responsibilities.* When service from underground electric and telecommunication utility facilities becomes available in all or part of a conversion area, the city engineer will issue a directive to the owners of all structures or improvements with service connections to the existing or temporary overhead utility facilities in the area by means of mailing a certified notice stating that service from the underground utility facilities is available and notifying the property owners of the owners' responsibilities.

B. *Property Owner's Responsibilities.* To facilitate completion of the city's project, all electric and telecommunication service connections from the existing aerial utility facilities within the area to any structure or improvement must be decommissioned, disconnected and removed within 90 calendar days after the date of mailing. After existing aerial utility facilities identified by the city's notice in subsection A of this section have been decommissioned, disconnected, and removed, the property owner must:

1. Convert the service connections from the aerial system to the underground system within 90 calendar days after the date of receipt of the notice or the city will order the electric and telecommunication utilities to disconnect and remove the service connections. If the owner has filed written objections to such disconnection and removal with the city clerk within 30 calendar days after the date of mailing, the city will not order disconnection and removal until after the appeal hearing on those objections; or

2. Notify the city engineer in writing within 30 calendar days after the date of receipt of the notice provided under subsection A of this section that the property owner wants to discontinue utility service; or

3. If the city engineer determines it is in the best interest of the public and the city's infrastructure system for the city to complete the service connection from the underground system to the existing aerial service point of connection and the property owner desires the city to do so, the property owner will enter into an agreement with the city within 90 calendar days after the date of mailing to provide property access to complete the conversion.

C. *Financial Responsibilities.*

1. For city projects, the cost of relocating existing utility aerial ~~distribution~~ facilities will be borne by the serving utility and the city in accordance with the filed tariffs or franchise agreement. If there is no filed tariff or franchise agreement, the cost of the relocation of existing aerial ~~distribution~~ facilities will be borne by the serving utility.

2. For city projects, the undergrounding of the service connections for real property served by the aerial electric or telecommunication utility facilities that are being relocated underground will be at the owner(s)'s expense, including:

a. Decommission, disconnect, and remove the service connections from those utility facilities to any structures or improvements located on the property.

b. Either install underground service connections to those structures/improvements on the property or, on approval of the city engineer, discontinue utility service to one or more of the structures/improvements on the property.

Services that are being connected by the city per subsection (B)(3) of this section are exempted from this requirement and the city will be financially responsible for those connection costs.

3. All conversion of utility facilities to underground facilities may be undertaken by local improvement district or as otherwise permitted by applicable law and as further authorized by RCW 35.96.030 and 35.96.040.

D. *Appeal Procedures.*

1. A property owner may appeal to the public works director the disconnection and removal of an aerial service connection by filing a written objection with the city clerk within 20 working days after the date of the mailing of the notice set forth in subsection A of this section. Failure to file a timely written objection will constitute a waiver of the owner's right to object to such disconnection and removal. The public works director will have 15 working days to review the appeal, decide whether to uphold or modify the city engineer's decision, and notify the property owner of such decision.

2. All appeals of the public works director's decision must be filed in writing with the public works director within 10 working days of the public works director's decision. Appeals must specify the error of law or fact, or new evidence which

could not have been reasonably available at the time of the public works director's decision, which shall constitute the basis of the complaint.

3. Appeals will be heard by the city's hearing examiner pursuant to Chapter 2.46 ACC. Decisions of the hearing examiner will be based on whether the decision being appealed was consistent with applicable ~~state~~ law and city codes.

4. Upon receipt of a timely written appeal, the hearing examiner will review the materials submitted and prepare findings of fact. The hearing examiner decision will be final. (Ord. 6713 § 1 (Exh. A), 2019; Ord. 6442 § 8, 2012; Ord. 6238 § 2, 2009.)

13.32A.140 Local improvement regulations apply.

Unless otherwise provided for in RCW 35.96.010 et seq., all the general provisions related to local improvements of cities and towns shall likewise apply to local improvements for the conversion of aerial electric and telecommunication facilities to underground facilities within the city limits. (Ord. 6238 § 2, 2009.)

13.32A.150 Authority.

The city engineer or designee shall be responsible for the application of this chapter related to the public ~~rights-of-~~way.

The building official or designee shall be responsible for the application of this chapter related to real property. (Ord. 6238 § 2, 2009.)

13.32A.160 Violation – Penalty.

Any violation of this chapter shall be enforced pursuant to the provisions of Chapter 1.25 ACC. (Ord. 6238 § 2, 2009.)

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6798 (Gaub, Tate)

Date:
December 11, 2020

Department:
Public Works

Attachments:
Ordinance No. 6798
Ordinance No. 6798 Exhibits A-C

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

Administrative Recommendation:

City Council to adopt Ordinance No. 6798.

Background Summary:

Due to changes in Federal and State regulations that govern the regulation of utilities, telecommunications and cable facilities in the public ways and on public property, staff has determined that updates to the Auburn City Code related to the provisions for franchises and leases for telecommunications, cable, and utilities are necessary.

Ordinance No. 6798 repeals Chapter 13.36 and 13.44 and amends Title 20 of the Auburn City Code. Key changes to these Chapters and Title are as follows:

- Update Auburn City Code in conformance with current federal and state requirements for utilities, telecommunications and cable in the public ways and on city owned facilities and property.
- Align and update definitions in Title 20 for utilities, telecommunications and cable.
- Modernize procedural provisions to reflect actual process.
- Repeal of Chapter 13.36 ACC and move and update the provisions related to cable franchises to Title 20 ACC to reflect current federal requirements.
- Repeal of Chapter 13.44 ACC as the provisions are outdated and addressed under the provisions of Title 20 ACC.
- Remove provisions for Public Way Agreements from Title 20 ACC as the City will not enter into these types of agreements in the future.
- Move all general provisions that would apply to all types of facilities, franchises, leases, and agreements under Title 20 ACC into Chapter 20.02 ACC.
- Move all specific utilities and telecommunications franchise requirements into Chapter 20.04 ACC.
- Move all specific cable franchise requirements into Chapter 20.06 ACC.
- Clarify, update, and repeal any unnecessary provisions under Chapter 20.08 ACC for facilities lease agreements.
- Repeal of Chapter 20.10 ACC and move and update the general and specific provisions into Chapters 20.02, 20.04, 20.06 and 20.08 as applicable.
- Repeal of Chapter 20.12 ACC as this chapter is empty.

The proposed amendments or repealing of language to the Auburn City Code are also subject to review by the Washington State Department of Commerce and subject to the State Environmental Policy Act and were transmitted to those agencies for review in October 2020.

Ordinance No. 6798 authorizes amendments or repealing of language in Chapters 13.36, 13.44, and Title 20 of the Auburn City Code as shown in Exhibits A through C of the Ordinance.

The City received comments from Industry representatives and either made revisions or provided clarification on intent of the code provisions to the Industry representatives prior to the Council's review of this Ordinance on November 23, 2020.

See Agenda Bill for Ordinance No. 6790, 6797, and 6799 for further information.

Reviewed by Council Committees:

Councilmember:	Brown	**Staff:**	Gaub
Meeting Date:	December 21, 2020	Item Number:	ORD.C

ORDINANCE NO. 6798

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO UPDATING THE PROVISIONS FOR FRANCHISES AND LEASES FOR TELECOMMUNICATIONS, CABLE, AND UTILITIES CONSISTENT WITH CURRENT FEDERAL AND STATE REGULATIONS, AND REPLEALING CHAPTERS 13.36 AND 13.44, AND AMENDING TITLE 20 OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn adopted Ordinance No. 4625 on May 5, 1993 enacting Chapter 13.36 entitled “CATV Systems” pursuant to Federal and State regulations; and

WHEREAS, the City of Auburn adopted Ordinance No. 3121on October 4, 1976 enacting Chapter 13.44 entitled “Electrical Franchise” granting to Puget Sound Power and Light Company, their successor and assigns, a franchise; and

WHEREAS, the City of Auburn adopted Ordinance No. 5034 January 5, 1998 enacting Title 20 entitled “Telecommunications and Other Commercial Utilities” pursuant to Federal and State regulations; and

WHEREAS, the provisions of Chapter 13.44 ACC are outdated and electrical franchise agreements have recently been negotiated under current applicable law; and

WHEREAS, the City has made only minor updates as necessary throughout the entire Auburn City Code since the adoption of Ordinance Nos. 4625 and 5034 as it relates to the regulation of telecommunications, cable systems and other utilities in the public ways and on public property; and

WHEREAS, due to changes in Federal and State regulations that govern the regulation of such industries and their presence within the City, it is necessary to update

the Auburn City Code in all titles, chapters an sections that authorize, regulate, affect or otherwise govern the review, construction, placement and siting of such telecommunications, cable and other utility facilities in the public ways and on city property or facilities; and

WHEREAS, the City also seeks to clarify and update terms, procedural requirements and approval processes for permits, franchises and leases for telecommunications, cable and other utility facilities placed in the public ways and on city owned property or facilities.

WHEREAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to state agency review by the Washington State Department of Commerce on or about October 9, 2020 for review; and

WHERAS, the proposed amendment and changes to the Auburn City Code that are the subject of this Ordinance were also subject to State Environmental Policy Act review and decision issued October 19, 2020.

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

Section 1. Repeal of City Code. Chapter 13.36 of the Auburn City Code is repealed as shown in Exhibit A.

Section 2. Repeal of City Code. Chapter 13.44 of the Auburn City Code is repealed as shown in Exhibit B.

Section 3. Amendment to City Code. Title 20 of the Auburn City Code is amended to read as shown in Exhibit C.

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, or on January 1, 2021, whichever is later.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____

ORDINANCE 6798
EXHIBIT A

Chapter 13.36
CATV SYSTEMS

[Repealed]

~~Sections:~~

~~13.36.010 Purpose.~~
~~13.36.020 Definitions.~~
~~13.36.030 Franchise – Conditions and term.~~
~~13.36.040 Franchise – Application requirements.~~
~~13.36.050 Public hearing and notice requirements.~~
~~13.36.060 Acceptance.~~
~~13.36.070 Police powers.~~
~~13.36.080 Rules and regulations by the city.~~
~~13.36.090 Technical standards and maintenance.~~
~~13.36.100 Parental control devices.~~
~~13.36.110 Construction standards.~~
~~13.36.120 Construction notification.~~
~~13.36.130 Undergrounding and landscaping.~~
~~13.36.140 Construction in right-of-way.~~
~~13.36.150 Safety requirements.~~
~~13.36.160 Building moving.~~
~~13.36.170 Tree trimming.~~
~~13.36.180 Rates.~~
~~13.36.190 Discounts.~~
~~13.36.200 Customer service.~~
~~13.36.210 Telephone response.~~
~~13.36.220 Failure to improve customer service.~~
~~13.36.230 Franchise fee.~~

13.36.240 Cable system evaluation.
13.36.250 Periodic meetings.
13.36.260 Record inspection.
13.36.270 Reports.
13.36.280 Programming.
13.36.290 Nondiscrimination.
13.36.300 Continuity of service.
13.36.310 Franchise renewal.
13.36.320 Transfer of ownership.
13.36.330 Removal and abandonment – Franchisee property.
13.36.340 Termination – Revocation for cause.
13.36.350 Effect of termination for noncompliance.
13.36.360 Indemnity and hold harmless.
13.36.370 Insurance.
13.36.380 Performance bond.
13.36.390 Franchising costs.
13.36.400 Equalization of civic contributions.
13.36.410 Inconsistency.
13.36.420 Severability.

For statutory provisions authorizing third-class cities to manage and control the city streets, see RCW 35.24.290(3); for provisions authorizing code cities to regulate and grant nonexclusive franchises for facilities for the transmission of signals and other methods of communication, see RCW 35A.47.040.

13.36.010 Purpose.

The purpose of this chapter is to set forth an integrated statement of conditions, requirements, obligations, duties and procedures for granting by the city of a nonexclusive franchise for the construction, maintenance and operation of a system

~~of cable television signal distribution within the territorial limits of the city of Auburn. (Ord. 4625 § 2, 1993.)~~

~~13.36.020 Definitions.~~

~~For the purposes of this chapter, the following definitions will apply:~~

~~A. "Access channels" (commonly referred to as "PEG" channels") means free composite channels to be used for educational purposes and by government and public agencies and/or their representatives.~~

~~B. "The Act" means the Cable Television Consumer Protection and Competition Act of 1992, and any subsequent amendments thereto.~~

~~C. "Addressability" means the ability of a system allowing a franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.~~

~~D. "Affiliate" means a condition of being united, being in close connection, allied, or attached as a member or branch.~~

~~E. "Applicant" means any person or entity that applies for a franchise.~~

~~F. "Basic cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.~~

~~G. "Cable services" means (1) the one-way transmission to subscriber of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.~~

~~H. "Channel" means a single path or section of the spectrum which carries a television signal.~~

~~I. "Character generator" means a device used to generate alphanumerical programming to be cablecast on a cable channel.~~

~~J. "City" means the city of Auburn, a municipal corporation of the state of Washington.~~

~~K. "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers.~~

~~L. "Council" means the city council of the city of Auburn.~~

~~M. "Data communication" means (1) the movement of encoded information by means of electrical or electronic transmission systems; and (2) the transmission of data from one point to another over communications channels.~~

~~N. "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single-family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple-family residential units.~~

~~O. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.~~

~~P. "Franchise" means the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.~~

~~Q. "Franchisee" means the person, firm or corporation to whom or which a franchise, as herein above defined, is granted by the council pursuant to this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this chapter and in a franchise granted in compliance with this chapter.~~

R. "Gross revenues" means any and all revenue derived directly or indirectly by franchisee, or by franchisee's affiliates, as defined in the federal Cable Act, from the operation of the franchisee's cable system to provide cable services in the franchise area. Gross revenues include, by way of illustration and not limitation, monthly and other fees charged subscribers for cable services including basic service, expanded basic service, any expanded tiers of cable service, other tiers of cable service, optional premium service, video on demand, pay-per-view, per-program channels, cable service installation, disconnection, reconnection and change-in-service fees, leased access channel fees, remote control rental fees, late fees and administrative fees, consideration received by the franchisee from programmers for carriage of cable services on the cable system and recognized as revenue under generally accepted accounting principles (GAAP), revenues from rentals of converters or other cable system equipment, advertising sales revenues (including local and a pro rata share of regional and national advertising carried on the cable system in the franchise area), net of commissions due to franchisee's unaffiliated advertising agencies that arrange for the advertising buy, revenues from program guides, additional outlet fees, revenue from the sale or carriage of other cable services, revenues from home shopping, and a fairly apportioned percentage of fees associated with bundled services (i.e., late fees, NSF fees, etc.). Gross revenues shall not include (1) bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; or (2) any taxes on services furnished by the franchisee that are imposed directly on any subscriber or user by the state, grantor or other governmental unit and that are collected by the franchisee on behalf of said governmental unit; or (3) the PEG fee as required by this franchise. The franchise fees are not a tax and are therefore included in gross revenues.

This definition shall be construed so as to include all gross revenues to the maximum extent permitted by federal and state law, except to the extent specifically excluded in this section, and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in state or federal law or a decision of the FCC or a court of competent jurisdiction expands or contracts the categories of revenue

~~available to the city for the franchise fee assessment beyond those permitted under this definition as of the effective date, this franchise may be amended to include or exclude any such category of revenue in the definition of gross revenues under this franchise; provided, that the city amends the franchises of all other similarly situated multichannel video provider over which the city has jurisdiction and authority to impose such fees.~~

~~S. "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.~~

~~T. "High definition television (HDTV)" means a television system that will provide sharper picture definition than the current U.S. Standards, 525 lines per frame.~~

~~U. "Insertion point(s)" means location(s) where institutional programming can be initiated for distribution throughout the secured portion of the subscriber network.~~

~~V. "Installation" means the connection of the system from feeder cable to subscribers' terminals.~~

~~W. "Institutional services" means a cable communications system designated principally for the provision of nonentertainment services to schools, public agencies or other nonprofit agencies which is separate and distinct from the subscriber network or is on secured channels of the subscriber network.~~

~~X. "Interactive services" means services provided to subscribers where the subscriber either (1) receives information consisting of television or other signals and transmits signals generated by the subscriber or equipment under their control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.~~

~~Y. "NCTA" means the National Cable Television Association.~~

~~Z. "Office" means the person or entity designated by the city of Auburn as being responsible for the administration of a franchise for the city.~~

~~AA. "Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of chapter.~~

~~BB. "Premium services" means programming over and above those provided by basic services for which there is an additional charge.~~

~~CC. "Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of its business in the city under the authority of a franchise granted pursuant to this chapter.~~

~~DD. "Proposal" means (1) the response by an individual or organization to a request by the city regarding the provision of cable services; or (2) an unsolicited plan submitted by an individual or organization seeking to provide cable services in the city.~~

~~EE. "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the city in the service area which shall entitle the city and a franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" shall also mean any easement now or hereafter held by the city within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the city and a franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appurtenances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.~~

~~FF. "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with franchisee's express permission. (Ord. 6284 § 1, 2010; Ord. 4625 § 2, 1993.)~~

~~13.36.030 Franchise – Conditions and term.~~

~~A. *Authority to Grant Franchises or Licenses for Cable Television.* The council may by resolution award a nonexclusive franchise to construct, operate and maintain a cable communications system which complies with the requirements and conditions of this chapter. Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits, or preclude the city from using any roads, rights-of-way, streets, or other public properties, or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties; provided, that any such changes shall not materially or substantially impair the rights granted a franchisee pursuant to this chapter. All franchises granted subsequent to the effective date of this chapter shall be consistent with the requirements and conditions of this chapter.~~

~~B. *Incorporation by Reference.* The provisions of this chapter shall be incorporated by reference in any franchises approved pursuant hereto. The provisions of any proposal for a franchise submitted and accepted by the city shall be incorporated by reference in the applicable franchise; provided, that in the event of any conflict between the proposal, this chapter and the franchise, the franchise shall be the prevailing document.~~

~~C. *Conditions of a Franchise.* Subject to the provisions in this chapter, any franchise granted hereunder by the city shall authorize a franchisee to: (1) engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the city; and (2) erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along~~

any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system; and (3) use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the city; provided, that no privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

D. *Term of Franchise.* The council shall have the right to grant a franchise for a period of time which in the council's judgement is the most appropriate to the circumstances of the particular grant and is in the best interests of the citizens of the city. (Ord. 4625 § 2, 1993.)

13.36.040 Franchise – Application requirements.

An applicant for an initial franchise to construct, operate, and maintain a cable communication system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable franchise application fee in the amount set forth in the city of Auburn fee schedule. (Ord. 6546 § 1, 2014; Ord. 4625 § 2, 1993.)

13.36.050 Public hearing and notice requirements.

A. Prior to the granting of a franchise, the city council shall conduct a public hearing to determine the following:

1. That the public will be benefited by the granting of a franchise to the applicant;

2. That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;

3. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the city;

4. That the applicant will comply with all terms and conditions placed upon a franchisee by this chapter;

5. That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;

6. The capacity of public rights-of-way to accommodate the cable system;

7. The present and future use of the public rights-of-way to be used by the cable system; and

8. The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public.

B. Notice of the public hearing shall comply with the following:

1. Briefly describe the purpose of hearing and state the place where the relevant information is available to the public, the time and place of the hearing and the date by which written comments must be submitted.

2. Published at least once during the two-week period preceding the hearing in a newspaper of general circulation within the city, and in one or as many more community newspapers as may be necessary to cover the entire cable franchise area, and be broadcast over the local access channel of the grantee in the cable franchise area affected at least once each day between the hours of 9:00 a.m. and 11:00 p.m. during the two weeks immediately preceding the hearing. (Ord. 4625 § 2, 1993.)

~~13.36.060 Acceptance.~~

~~A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the resolution granting same has become effective and the grantee has accepted same as provided below.~~

~~B. Within 60 days after the effective date of the resolution awarding a franchise, or within such extended period of time as the council in its discretion may authorize, a franchisee shall file with the city clerk its written acceptance of the franchise, in a form satisfactory to the city attorney, together with the bond and insurance policies required by ACC 13.36.370 and 13.36.380. (Ord. 4625 § 2, 1993.)~~

~~13.36.070 Police powers.~~

~~In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the city to adopt and enforce general laws necessary to protect the safety and welfare of the public. The franchisee also agrees to comply with all applicable general laws enacted by the city pursuant to such power so long as such regulations do not materially increase the burden or impair the rights of the franchise as provided for in this chapter. (Ord. 4625 § 2, 1993.)~~

~~13.36.080 Rules and regulations by the city.~~

~~In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to the city by the Act, and those powers expressly reserved by the city or agreed to and provided for in a franchise, the city also reserves the right and power to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers. (Ord. 4625 § 2, 1993.)~~

~~13.36.090 Technical standards and maintenance.~~

~~A. Subject to federal, state and local law, a franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended hereafter, and, at the minimum, the following:~~

~~1. Applicable city, county, state and national/federal codes, laws and regulations;~~

~~2. Applicable utility joint attachment practices;~~

~~3. The National Electric Safety Code; ANSI C2;~~

~~4. Local utility code requirements;~~

~~5. Local rights-of-way procedures, in accordance with ACC Titles 12, 13 and 20.~~

~~B. A comprehensive routine preventive maintenance program shall be developed, effected and maintained to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part 76 and amendments thereto. (Ord. 6238 § 3, 2009; Ord. 4625 § 2, 1993.)~~

~~13.36.100 Parental control devices.~~

~~A franchisee will make available at its cost, including applicable handling fees, a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber. (Ord. 4625 § 2, 1993.)~~

~~13.36.110 Construction standards.~~

~~All facilities constructed pursuant to the provisions of this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable sections of the National Electrical Code,~~

codes of the state of Washington and ACC Titles 12, 13 and 20 pertaining to such construction. (Ord. 6238 § 4, 2009; Ord. 4625 § 2, 1993.)

13.36.120 Construction notification.

Upon application for each construction permit in compliance with this chapter, a franchisee shall submit to city its plan for advance notification for the proposed construction project. In the event that an emergency situation arises which precludes such advance notification, a franchisee shall subsequently inform the city of the nature of the extraordinary event and the action taken. (Ord. 4625 § 2, 1993.)

13.36.130 Undergrounding and landscaping.

Undergrounding of all utility facilities will meet the requirements of Chapter 13.32A ACC. (Ord. 6238 § 5, 2009; Ord. 4625 § 2, 1993.)

13.36.140 Construction in right-of-way.

Whenever, in the sole opinion of the city, any of a franchisee's facilities or equipment need to be relocated or altered due to a construction or repair project by the city in a public way, a franchisee shall move or relocate said facilities or equipment within 30 days from receiving written notice from the city. However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within 24 hours. Any relocation or alteration of a franchisee's facilities or equipment required under this section shall be at the sole expense of a franchisee. Installation and/or relocation of all underground and aerial facilities within existing city right-of-way or public ways or city utility easements shall be permitted under Chapter 12.24 ACC, Construction Permits. (Ord. 5043 § 1 (Exh. B), 1998; Ord. 4625 § 2, 1993.)

~~13.36.150 Safety requirements.~~

~~A franchisee, in accordance with applicable national, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.~~

~~All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.~~

~~The city reserves the general right to see that the system of a franchisee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the city, the city will, after discussions with a franchisee, establish a reasonable time for a franchisee to make necessary repairs. If the repairs are not made within the established time frame, the city may make the repairs itself or have them made and collect all reasonable costs thereof from the franchisee. (Ord. 4625 § 2, 1993.)~~

~~13.36.160 Building moving.~~

~~Whenever any person shall have obtained permission from the city to use any street for the purpose of moving any building, a franchisee shall, upon seven days' written notice from the city, raise or remove, at the expense of the permittee desiring to move the building, any of a franchisee's wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with the codes and regulations of the city. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference. In such event, the city shall be responsible for determining the path of least interference. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee~~

from any and all damages or claims of any kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of a franchisee. (Ord. 4625 § 2, 1993.)

13.36.170 Tree trimming.

Upon approval of the director of public works, a franchisee shall have the authority to trim trees upon and overhanging streets, public ways and public places in the franchise area so as to prevent the branches of such trees from coming into contact with a franchisee's wires and cables, and, if necessary, to clear a microwave path. A franchisee shall be responsible for debris removal from such activities. Failure to remove debris after a reasonable time shall result in the debris being removed by the city and the costs involved charged to the franchisee. (Ord. 4625 § 2, 1993.)

13.36.180 Rates.

Within 60 days after the grant of any franchise hereunder, a franchisee shall file with the city a complete schedule of all rates to be charged to all subscribers.

Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, the franchisee shall provide the city and all subscribers a minimum of 30 days prior written notice of such change.

Subject to federal, state and local law, the city may regulate the approval of increases of rates or charges for providing cable service and prescribe reasonable rate approval procedures. (Ord. 4625 § 2, 1993.)

13.36.190 Discounts.

A franchisee shall offer a discount of 30 percent from the normal charge for basic services and installation to those individuals age 62 or older or disabled who are the

~~legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed the Housing and Urban Development (HUD) standards for the Seattle-Everett area for the preceding calendar year.~~

~~The city or its designee shall be responsible for certifying to a franchisee that such applicants conform to the specified criteria. (Ord. 4625 § 2, 1993.)~~

~~13.36.200 Customer service.~~

~~A. A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A log of all service interruptions shall be maintained for at least a period of one year. The city, after two working days' notice, may inspect such logs.~~

~~B. An employee of a franchisee shall answer and respond to all individual complaints received no later than 5:00 p.m. weekdays. A franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays, weekends and holidays and will respond to any system outage affecting more than five subscribers. A copy of the instructions to the answering service by a franchisee shall be furnished to the city or its designee.~~

~~C. A technician shall be on call seven days a week, 24 hours a day. A franchisee shall respond immediately to service complaints in an efficient manner.~~

~~D. A franchisee shall maintain a sufficient repair force to respond to individual requests for repair service within two working days after receipt of the complaint or request, except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable. If a subscriber has notified a franchisee of an outage, no charge for the period of the outage shall be made to the~~

~~subscriber if the subscriber was without service for a period exceeding 24 hours, unless the outage was due to acts of God, force majeure or circumstances reasonably beyond a franchisee's ability to control.~~

~~E. A franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address, and telephone number of the city official or designee, to whom system subscribers may direct their concerns.~~

~~F. In no case will a franchisee's service standards fall below the standards established by the National Cable Television Association (NCTA) which are attached to the ordinance codified in this chapter as Appendix "A" and incorporated within this chapter[1] or any FCC regulation. (Ord. 4625 § 2, 1993.)~~

~~1 Code revisor's note: Appendix "A" is on file in the office of the city clerk.~~

~~13.36.210 Telephone response.~~

~~A. A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the city.~~

~~B. In order that the city may be informed of a franchisee's success in achieving satisfactory customer relations in its telephone answering functions, a franchisee shall, upon request by the city, and routinely no less than quarterly, provide the city with a summary that will provide, at a minimum, the following:~~

~~1. Total number of calls received in reporting periods;~~

~~2. Time taken to answer;~~

~~3. Average talk time;~~

4. Number of calls abandoned by the caller;

5. Average hold time;

6. Percentage of time all lines busy;

7. An explanation of any abnormalities.

This data will be compared to minimum standards of the NCTA incorporated in this chapter by reference or any amendment thereto which increases such NCTA standards, and shall be monitored by the city.

C. Calls for service generated during period of system outages due to emergency which affects more than 25 customers may be excluded from the service response calculations. The city shall have the sole determination as to what constitutes a system failure due to emergency and which calls shall be excluded from the service level calculations. (Ord. 4625 § 2, 1993.)

13.36.220 Failure to improve customer service.

A. The city or its designee shall review telephone response and customer service information with a franchisee. The franchisee shall make improvements in the appropriate categories which were found deficient pursuant to ACC 13.36.190 and 13.36.200 from the last reporting period. Failure to do so may result in the calling of a public hearing by the council for the purpose of examining the reasons, if any, why such improvements were not achieved by a franchisee.

B. An unsatisfactory record will result in the hearings being made part of an exhibit under Sections 626(c)(1)(A) and (B) of the Act alleging that such practices have failed to conform with future refranchising requirements as stated therein. In addition, a franchisee's corporate office shall be advised of the city's findings. (Ord. 4625 § 2, 1993.)

~~13.36.230 Franchise fee.~~

~~A franchisee shall pay to the city quarterly, on or before the thirtieth day of each January, April, July and October, a sum as set forth in the Auburn fee schedule. Such remittances shall be accompanied by forms furnished by the city to report detailed information as to the sources of such income. (Ord. 6546 § 2, 2014; Ord. 4625 § 2, 1993.)~~

~~13.36.240 Cable system evaluation.~~

~~A. In addition to periodic meetings, the city may require reasonable evaluation sessions at any time during the term of a franchise. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.~~

~~B. During an evaluation session, a franchisee shall fully cooperate with the city and shall provide without cost such reasonable information and documents as the city may request to perform evaluations.~~

~~C. If the city has concerns because of uncorrected and reoccurring problems with the franchisee's cable system, the city may retain an independent consultant to conduct an analysis of the cable system and its performance and submit a report of such analysis to the city. The city shall take into consideration any efforts taken to correct such deficiencies.~~

~~D. The report prepared by the consultant in response to the city's request for a system evaluation shall include:~~

~~1. A description of the technical problem in cable system performance which precipitated the special tests;~~

~~2. What cable system components were tested;~~

3. The equipment used and procedures employed in testing;

4. The method, if any, by which specific performance problems may be resolved;

5. Any other information pertinent to said tests and analyses which may be required by the city, or determined when the test is performed.

E. If the tests indicate that the system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the city for any costs involved in conducting such tests, such as consultant fees or other expenses. Such fees or expenses shall not exceed $2,500 for each evaluation. (Ord. 4625 § 2, 1993.)

13.36.250 Periodic meetings.

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of a franchisee for the preceding period. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests. (Ord. 4625 § 2, 1993.)

13.36.260 Record inspection.

Subject to statutory and constitutional limits and two working days' advance notice, the city reserves the right to inspect the records of a franchisee necessary for the enforcement of a franchise and verification of the accuracy of franchise fee payments at any time during normal business hours; provided, that the city shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of a franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, and plans pertaining to a franchisee's operation in the city. (Ord. 4625 § 2, 1993.)

~~13.36.270 Reports.~~

~~A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:~~

~~A. Most recent annual report;~~

~~B. A copy of the 10-K Report, if required by the Securities and Exchange Commission;~~

~~C. The number of homes passed;~~

~~D. The number of subscribers with basic services;~~

~~E. The number of subscribers with premium services;~~

~~F. The number of hook-ups in period;~~

~~G. The number of disconnects in period;~~

~~H. Total number of miles of cable in city;~~

~~I. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution;~~

~~J. A statement of its current billing practices, and a sample copy of the bill format;~~

~~K. A current copy of its subscriber service contract;~~

~~L. Report on operations; and~~

~~M. Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate. (Ord. 4625 § 2, 1993.)~~

~~13.36.280 Programming.~~

~~For informational purposes, a franchisee shall file a listing of its programing and the tiers in which they are placed. A franchisee shall consider the city's suggestions of general program categories as determined from time to time in residential questionnaire polls. The results of initial such surveys will be appended to the respective franchise agreements. (Ord. 4625 § 2, 1993.)~~

~~13.36.290 Nondiscrimination.~~

~~A. A franchisee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and, provided further, that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee.~~

~~B. A franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 4625 § 2, 1993.)~~

~~13.36.300 Continuity of service.~~

~~It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to a franchisee are fulfilled.~~

~~A. In this regard a franchisee shall act so far as it is within its control to ensure that all subscribers receive continuous uninterrupted service during the term of the franchise.~~

~~B. In the event a franchisee fails to operate a system for 72 continuous and consecutive hours without prior notification to and approval of the city council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the city may, after notice and an opportunity for a franchisee to commence operations at its option, operate the system or designate someone to operate the system until such time as a franchisee restores service to conditions acceptable to the city council or a replacement franchisee is selected. If the city is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of a franchisee's failure to perform. (Ord. 4625 § 2, 1993.)~~

~~13.36.310 Franchise renewal.~~

~~The provisions of Section 626 of the Act, or other applicable federal or state law, will govern the actions of the city and a franchisee in proceedings relating to franchise renewal. The city expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of a franchisee's performance during the term of such franchise. (Ord. 4625 § 2, 1993.)~~

~~13.36.320 Transfer of ownership.~~

~~A. A franchisee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an affiliate, without the prior consent of the city, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by other hypothecation, or by assignment of any rights, title, or interest of the franchisee in the franchise or cable system in order to secure indebtedness. Approval shall not be required for mortgaging purposes provided that the collateral does not specifically affect the~~

assets of this franchise, or if the transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

B. In any transfer of a franchise requiring city approval, the applicant must show technical ability, financial capability, legal and general qualifications as determined by the city, and must agree to comply with all provisions of the franchise. All costs associated with the transfer process shall be reimbursed to the city.

C. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

D. Regardless of the circumstances, a franchisee shall promptly notify the city prior to any proposed change, transfer, or acquisition by any other party of a franchisee's company. In the event that the city adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the city may cancel the franchise. (Ord. 4625 § 2, 1993.)

13.36.330 Removal and abandonment – Franchisee property.

A. The city may direct a franchisee to temporarily disconnect or bypass any equipment of a franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the city. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.

B. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the franchise or other city ordinances or the franchise has been terminated, cancelled or has expired, a franchisee shall promptly, upon being given

~~10 days' notice, remove within 90 days from the streets or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, a franchisee shall promptly restore the street or other areas in accordance with local regulations and standards from which such property has been removed to a condition similar to that existing before such removal and satisfactory to the city. Such approval shall not be unduly withheld.~~

~~C. Any property of a franchisee remaining in place 90 days after the termination or expiration of the franchise shall be considered permanently abandoned. The city may extend such time not to exceed an additional 90 days.~~

~~D. Any property of a franchisee to be abandoned in place shall be abandoned in such manner as the city shall prescribe. Upon permanent abandonment of the property of a franchisee in place, the property shall become that of the city, and a franchisee shall submit to the city clerk an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law. In the event the city and a franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section, either party may invoke arbitration to resolve such question. (Ord. 4625 § 2, 1993.)~~

~~13.36.340 Termination – Revocation for cause.~~

~~A. If a franchisee willfully violates or fails to comply with any of the material provisions of a franchise, the city shall give written notice to a franchisee of the alleged noncompliance of its franchise. A franchisee shall have 45 days from the date of notice of noncompliance to cure such alleged default or, if such default cannot be cured within 45 days, to present to the city a plan of action whereby such default can be promptly cured.~~

B. If such default continues beyond the applicable dates agreed to for such cure, the city shall give a franchisee written notice that all rights conferred under this chapter and pursuant to its franchise may be revoked or terminated by the council after a public hearing. A franchisee shall be entitled to not less than 30 days' prior notice of the date, time and place of the public hearing. The city may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling a franchisee to comply with the provisions of the franchise and recover damages and costs incurred by the city by reason of a franchisee's failure to comply. (Ord. 4625 § 2, 1993.)

13.36.350 Effect of termination for noncompliance.

Subject to state and federal law, if any franchise is terminated by the city by reason of a franchisee's noncompliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the city, become the property of the city at a cost consistent with the provisions of Section 627(b)(1) of the Act. If the city, or a third party, does not purchase the system, a franchisee shall, upon order of the city council, remove the system as required under ACC 13.36.330. (Ord. 4625 § 2, 1993.)

13.36.360 Indemnity and hold harmless.

A franchisee will indemnify and hold harmless the city from any and all liabilities, fees, costs and damages, except in the case of judicially determined gross negligence and/or willful misconduct of the city, whether to person or property, or expense of any type or nature which may occur to the city by reason of the construction, operation, maintenance, repair and alteration of a franchisee's facilities or any other actions of a franchisee in the city. In any case in which suit or action is instituted against the city by reason of damage or injury caused by a franchisee, the city shall cause written notice thereof to be given to a franchisee and a franchisee

~~thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the city. (Ord. 4625 § 2, 1993.)~~

~~13.36.370 Insurance.~~

~~A. A franchisee shall, concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the city and file with the city clerk, and at all times during the existence of any franchise granted hereunder maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, for the purpose of protecting the city and all persons against liability for loss or damage, for personal injury, death and property damage, and errors or omissions, occasioned by the operations of a franchisee under such franchise, such policy to provide minimum limits of $1,000,000 for both personal injury and/or property damage.~~

~~B. The policies mentioned in the foregoing paragraph shall name the city as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the city 30 days in advance of the effective date thereof. If such insurance is provided by a policy which also covers a franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 4625 § 2, 1993.)~~

~~13.36.380 Performance bond.~~

~~A franchisee shall promptly repair or cause to be repaired any damage to city property caused by a franchisee or any agent of a franchisee. A franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and, if deemed necessary by the city, shall be required to post a performance bond or other surety acceptable to the city in an amount specified by the city in favor of the city warranting that all restoration work will be done promptly and~~

~~in a workmanlike manner and that penalties, if any, after final adjudication are paid to the city within 90 days of such finding. (Ord. 4625 § 2, 1993.)~~

~~13.36.390 Franchising costs.~~

~~A franchisee shall pay to the city upon acceptance of any franchise granted hereunder the city's out-of-pocket costs associated with the franchising process. The city shall provide the franchisee an itemization of its anticipated costs. Such payment is in addition to franchise fee payments. Payment is due within 30 days of receipt of appropriate invoice from the city. (Ord. 4625 § 2, 1993.)~~

~~13.36.400 Equalization of civic contributions.~~

~~A. In the event of one or more franchises being granted pursuant to the provisions of this chapter, the city may require that such subsequential franchisees pay to the city an amount proportionally equal to franchising costs contributed by the initial franchisee. These costs may include, but are not limited to, such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.~~

~~B. On the anniversary of the grant of each later awarded franchise, such franchisees shall pay to the city an amount proportional to the amount contributed by the original franchisee, based upon the amount of subscribers held by such franchisees.~~

~~C. Additional franchisees shall provide all PEG access channel(s) and the emergency override system currently available to the subscribers of existing franchisees. In order to provide these access channels, additional franchisees may interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees.~~

~~The city council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements. (Ord. 4625 § 2, 1993.)~~

~~13.36.410 Inconsistency.~~

~~If any portion of chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this chapter shall not be affected thereby. (Ord. 4625 § 2, 1993.)~~

~~13.36.420 Severability.~~

~~Each section, subsection or other portion of chapter shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder. (Ord. 4625 § 2, 1993.)~~

ORDINANCE 6798
EXHIBIT B

Chapter 13.44
ELECTRICAL FRANCHISE

[Repealed]

~~Sections:~~

~~13.44.010 Granted.~~
~~13.44.020 Grantee defined.~~
~~13.44.030 Public highways and places – Defined – Scope.~~
~~13.44.040 Pole and cable maintenance.~~
~~13.44.050 Indemnification of city.~~
~~13.44.060 Building moving – Wire removal.~~
~~13.44.070 Acquisition of grantee's property.~~
~~13.44.080 Franchise not exclusive.~~
~~13.44.090 Severability.~~
~~13.44.100 Written acceptance required.~~

~~13.44.010 Granted.~~

~~There is granted to Puget Sound Power and Light Company, a Washington corporation, its successors and assigns, hereinafter called the grantee, for the term of 25 years beginning on the first day of January, 1977, and ending on the thirty-first day of December, 2001, the right, privilege, authority and franchise to set, erect, construct, replace, maintain and use poles and lines of poles (with or without crossarms) and all convenient appurtenances, equipment and facilities for the support thereof, or underground cables with appurtenances thereto where such underground facilities have been specially contracted for, in, upon, over, along and~~

~~across the public highways and places, as hereinafter defined, in the city of Auburn, and to attach wires and cables to such poles and crossarms and stretch wires and cables from pole to pole and to the premises of patrons for the transmission, distribution and sale of electricity for power, heat, light and any other purpose or purposes for which electricity may be used, whether for municipal, domestic, manufacturing or other uses and purposes, and to charge and collect tolls, rates and compensation for such electricity, and also the right to attach to such poles and crossarms and maintain private telephone wires for the exclusive use of the grantee in connection with its electric business. (Ord. 3121 § 1, 1976.)~~

~~13.44.020 Grantee defined.~~

~~The word "grantee" is used in this chapter to refer to and include not only Puget Sound Power and Light Company, the immediate grantee hereof, but also the successors and assigns of said Puget Sound Power and Light Company who may successively become the owners, of the rights granted by this chapter. (Ord. 3121 § 2, 1976.)~~

~~13.44.030 Public highways and places -- Defined -- Scope.~~

~~The grant hereby made is intended to, and does include any, all and every of the public streets, avenues, alleys, highways, and public grounds and places in the city of Auburn as now laid out, platted and dedicated, and all public streets, avenues, alleys, highways and public grounds and places that may be hereafter laid out and dedicated within the present limits of said city or within the limits thereof as the same may hereafter be extended, all of which are included within the words "public highways and places" wherever such words are used in this chapter. (Ord. 3121 § 3, 1976.)~~

~~13.44.040 Pole and cable maintenance.~~

~~All poles and/or underground cables shall be constructed and maintained at such places and in such positions upon said public highways and places as shall least interfere with the free passage of traffic thereon, and in accordance with the laws of the state of Washington regulating such construction, such installations to be made under the supervision of, and with the permission of the director of public works of the city of Auburn or other assigned by the mayor or city council. Whenever it shall be necessary to make any excavation in any public highway or place for the erection, repair or substitution of any pole, underground cables or other equipment or facilities the grantee shall without delay restore the surface of said public highway or place as nearly as practicable to the same condition it was in before the doing of such work. (Ord. 3121 § 4, 1976.)~~

~~13.44.050 Indemnification of city.~~

~~The grantee shall indemnify the city of Auburn for, and hold it harmless from, all damages that may result from the construction, maintenance or operation by such grantee of any of its property in said public highways or places pursuant to this franchise and shall pay all damages for which the grantee or the city of Auburn shall be held liable as the result of injuries suffered by any person, association or corporation by reason of the construction, maintenance or operation of such property; provided, that in case any claim is filed with the city of Auburn or any suit or action is instituted against said city by reason of any such damage or injury the city council shall promptly cause written notice thereof to be given to the grantee and the grantee shall have the right to defend any such suit or action. (Ord. 3121 § 5, 1976.)~~

~~13.44.060 Building moving – Wire removal.~~

~~Whenever any person shall have obtained permission from the city of Auburn to use any public highway or place in said city for the purpose of moving any building the~~

~~grantee, upon seven days' written notice from the city clerk of said city, shall raise or remove, at the expense of the person desiring to move said building, any of the wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with the regulations and general ordinances of the city and at such reasonable hours and in such reasonable manner as shall cause the least interference with the business of the grantee, and where more than one street is available for the moving of such building it shall be moved on such street as shall cause the least interference with the business of the grantee; and provided further, that the person moving such building shall indemnify the grantee for, and save it harmless from, any and all damages or claims therefor of whatsoever kind or nature that may be caused directly or indirectly by such temporary arrangement of the poles, wires or other property of the grantee. (Ord. 3121 § 6, 1976.)~~

~~13.44.070 Acquisition of grantee's property.~~

~~If during the term of this franchise the city of Auburn shall acquire, by purchase or condemnation any of the grantee's property maintained or used hereunder no greater sum shall be allowed for the value of the rights herein granted, in addition to all other elements affecting the value of such purchased or condemned property, than the actual cost of obtaining this franchise. (Ord. 3121 § 7, 1976.)~~

~~13.44.080 Franchise not exclusive.~~

~~This franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any manner prohibit the city of Auburn from granting other and further franchises in, upon, over, along or across any of said public highways and places. (Ord. 3121 § 8, 1976.)~~

~~13.44.090 Severability.~~

~~If any term, provision, condition or portion of this franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this franchise which shall continue in full force and effect. (Ord. 3121 § 9, 1976.)~~

~~13.44.100 Written acceptance required[1].~~

~~In order to claim any right or benefit under this franchise the grantee shall file its written acceptance of this franchise with the city clerk within 30 days after the approval hereof by the mayor and the publication of this chapter as required by law. (Ord. 3121 § 10, 1976.)~~

~~1 Puget Sound Power and Light Company executed written acceptance of this franchise November 30, 1976.~~

ORDINANCE 6798
EXHIBIT C

Title 20

~~TELECOMMUNICATIONS AND OTHER COMMERCIAL UTILITIES~~FRANCHISES, CABLE FRANCHISES, AND LEASES

Chapters:

20.02	General Provisions
20.04	~~Public Way Agreements~~Utility and Telecommunications Franchises
20.06	Cable Franchise
20.08	Facilities Lease
20.10	~~Conditions of Public Way Agreements, Franchises, and Facilities Leases~~Repealed
20.12	~~*Open Video Systems*~~ Repealed
20.14	Small Wireless Facilities ~~within the Public Rights-of-Way~~

Chapter 20.02
GENERAL PROVISIONS

Sections:

20.02.010 Purpose.
20.02.020 Definitions.
20.02.030 Business ~~registration~~ license required.
20.02.040 ~~Public way agreement~~Franchise required.
20.02.050 Cable television f~~F~~ranchise required.
20.02.060 ~~Cable television franchise~~Facilities lease required.
20.02.070 ~~Facilities lease required~~Authorizations necessary for Construction.
20.02.080 ~~Construction permit required.~~Applications to existing franchise, cable franchise, leases, and permits and effect of other laws.
20.02.090 ~~Application to existing franchise ordinances, agreements, leases, and permits and effect of other laws.~~Fees and Compensation not a tax.
20.02.100 ~~Reserved.~~Taxes are not to be a credit
20.02.110 ~~Fees and compensation not a tax~~Accounts, books and records.
20.02.120 ~~Taxes are not to be a credit.~~Location of facilities
20.02.130 Oversized loads.
20.02.140 Care of trees along streets.
20.02.150 Use of utility poles and facilities of others.
20.02.160 Use of poles and facilities by city.
20.02.170 Interference with the public ways.
20.02.180 Leased capacity.
20.02.190 Damage to property.
20.02.200 Repair and emergency work.
20.02.210 Maintenance, abandonment, relocation, or removal of facilities.
20.02.220 Removal of unauthorized facilities.
20.02.230 Emergency removal or relocation of facilities.
20.02.240 Damage to facilities.

20.02.250 Restoration of public ways, other ways, city property, and public/private utility property.
20.02.260 Facilities maps.
20.02.270 Insurance.
20.02.280 Financial security
20.02.290 Assignments or transfers of franchises, cable franchises, or leases.
20.02.300 Civil penalties.
20.02.310 Unfunded mandate.
20.02.320 Administration.

20.02.010 Purpose.

The purpose and intent of this title is to:

A. Establish a local policy concerning regulation of telecommunications carriers, operators, providers, cable operators, and other ~~commercial~~ utilities in public ways and on city and/or public property;

B. Establish, consistent with applicable ~~federal and state~~ law, clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of activities of telecommunications carriers, operators, providers, cable operators, and other ~~commercial~~ utilities in public ways and on city and/or public property;

C. Promote competition in telecommunications and cable service;

D. Minimize unnecessary local regulation of telecommunications carriers, operators, providers, cable operators, and other ~~commercial~~ utilities;

E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;

F. Permit and manage reasonable access to the public ways ~~of the city~~ for telecommunications, cable and utility purposes on a competitively neutral basis;

G. Conserve the limited physical capacity of the public ways held in public trust by the city;

H. Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking or using such access and causing such costs;

I. To the extent permitted by ~~federal and state~~applicable law, secure fair and reasonable compensation to the city and the residents of the city for permitting private use of the public ways;

J. Assure that all telecommunications carriers, operators, providers, cable operators, and other ~~commercial~~ utilities utilizing public ways or city or public property within the city comply with the ordinances, rules and regulations of the city;

K. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare; and

L. Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.020 Definitions.

For the purpose of this title, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

A. "The Act" means the ~~Federal Telecommunications~~Communications Act of 1934, as amended ~~January 31, 1996~~.

~~"Addressability" means the ability of a telecommunications system to allow telecommunications carriers, operators, or providers to authorize by remote control customer terminals to receive, change, or to cancel any or all specified programming.~~

B. "Affiliate" means an entity which (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with franchisee. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

C. "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

D. "Applicant" means any person or entity that applies for any ~~public way agreement,~~ franchise, cable franchise, lease, or permit pursuant to this title.

~~"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers.~~

E. "Cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.~~a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the Cable Act and Chapter 13.36 ACC.~~

F. "Cable service" means (A) the one-way transmission to subscribers of (i) video programing, or (ii) other programing service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming of other programming service.~~for the purpose of this title shall have the same meaning provided by the Cable Act and Chapter 13.36 ACC.~~

G. "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed

to provide cable service ~~and other service to subscribers.~~which includes video programing and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one(1) or more television broadcast stations;

2. A facility that serves subscribers without using any public way;

3 A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c)(47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An open video system that complies with federal statutes; or

5. Any facilities of any electric utility used solely for operating its electric utility system;

H. "Carrier" means any provider of telecommunications services, except that this term does not include aggregators of telecommunications services as defined in Section 225 of the Act. (See also "Telecommunications carrier.")

I "City" means the city of Auburn, Washington as defined in ACC 1.04.010 to include all future areas annexed into the city.

J. "City property" means and includes all real property owned by the city, other than public ways and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the city, which are not subject to ~~public way agreements and~~ franchising as provided in this title.

~~"Commercial utility provider" means any natural gas, electric power, pipeline, or other company desiring to utilize city public ways for transporting, purveying, or~~

~~delivering bulk products, or providing commercial power or gas services within the city, or needing to transport bulk product or services through the city to other destinations for commercial purposes.~~

K. "Council" means the city council of the city of Auburn, Washington acting in its official capacity constituting the legislative body of the city.

~~"Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.~~

~~"Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single-family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple-family residential units.~~

L. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

M. "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications, cable, or utility facilities.

N. "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee cable and telecommunications carriers, services and providers on a national level.

~~"Fiber optics" means the technology of guiding and projecting light for use as a communications medium.~~

O. "Franchise" shall mean the initial authorization, or renewal thereof, approved by an ordinance of the city, which authorizes the franchisee to construct, install, operate, or maintain telecommunications, cable or other ~~commercial~~ utility facilities in, under,

over, or across public ways ~~of the city~~ and to also provide service to persons or areas in the city.

P. "Franchise area" means all areas within the current city limits and within any future adjusted boundaries of the city limits. The effective date of any such changes in the city limits will be the effective date(s) of any future annexations.

Q. "Franchisee" means a person, as defined herein, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this title and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in the franchise and in this title.

~~"Grantee" means a holder of a public way agreement, franchise, or lease approved by the city council of the city of Auburn.~~

R. "Gross revenue" shall mean a cable operator's gross revenues derived from the operation of the cable system to provide cable services. Gross revenues for the purposed of calculating franchise fees shall be as set forth in any franchise agreement.~~all receipts accrued in a franchisee's books for all commercial utility, communications and communications-related operations and services from subscribers, who have a service address within the corporate limits of the city of Auburn, to franchisee's business as well as any other revenue arising from operation or possession of a franchise agreement with the city of Auburn, less the application and administrative fees mandated in the franchise agreement and the franchise fee intended for compensation for use of "public ways." By way of example, but without limitation, "gross revenue" includes all revenues from the sale or lease of equipment, installation charges to subscribers who have service addresses within the corporate limits of the city, charges to customers, subscribers and other users of the telecommunications system who have service addresses within the corporate limits of the city. "Gross revenues" does not include: (a) taxes, fees, or assessments of any kind or description imposed on or levied against franchisee which are not applicable to all other persons or entities doing business within the city, (b) revenues noncollectible from customers (bad debts) which have been written off through~~

~~generally accepted accounting practices, (c) discounts, and (d) any applicable exclusions under the law.~~

S. "Lessee" means the holder of a lease for use of city or public property which has been approved by the city council of the city of Auburn.

T. "Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the city, but under the jurisdiction and control of a governmental entity other than the city.

U. "Overhead facilities" means utility poles, ~~utility facilities and~~ telecommunications, cable, or other ~~commercial~~ utility facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

~~"OVS" means open video system which is a telecommunications system having two-thirds of its capacity set aside for use by other providers, programmers, or competitive business on a subleasing basis. Because of its self-competitive nature, an OVS is subject to regulatory restrictions.~~

V. "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

~~"Property of franchisee" means all plant, or facilities owned, installed or used by a franchisee in the conduct of its business in the city under the authority of a franchise granted pursuant to this title.~~

W. "Proposal" means an application by any person or entity that applies for any ~~public way agreement,~~ franchise, cable franchise lease, or permit pursuant to this title.

X. "Public place" means an area generally open to public access including all public ways, parks, plazas, publicly owned buildings, theaters, and entrances or doorways to places of business that front on a public way.

Y. "Public street" means any highway, street, alley or other public ~~right-of-~~way for motor vehicle travel under the jurisdiction and control of the city which has been acquired, established, dedicated or devoted to ~~highway purposes.~~the movement of motorized and non-motorized traffic, including city streets as part of state highways under Chapter 47.24 RCW.

Z. "Public way(s)" shall mean the surface, the air space above the surface, and the space below the surface of any public street, including, but not limited to, any public alley, bridge, land path, trail, court, circle, roundabout, boulevard, drive, tracts, right-of-way or sidewalk under the jurisdiction of the city as is now, or in the future, laid out, improved or unimproved within the limits of the city presently and as such limits may be hereafter extended.

AA. "State" means the state of Washington.

BB. "Subscriber" or "customer" means a person or user of the ~~commercial~~ utility, ~~or~~ telecommunications, or cable system who lawfully receives ~~commercial~~ utility, ~~or~~ telecommunications, or cable services, or other service therefrom, with franchisee's express permission.

CC. "Substantial change" for purposes of this chapter means a modification that substantially changes the physical dimensions of an eligible support structure located in the public way if, after the modification, the structure meets any of the following criteria:

1. It increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;

2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for wireless communication towers in the public way and base stations, it involves installation of any new equipment cabinets on the ground if there are no

preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site as that term is defined in 47 CFR §1.6100;

5. It would defeat the concealment elements of the eligible support structure; or

6. It does not comply with conditions associated with the original approval of the construction or modification of the eligible support structure or base station equipment, unless noncompliance is only in a manner that would exceed the thresholds identified in subsections (1) through (4) of this definition.

For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure as it existed at the time the first EFR request was approved for that structure in cases where facilities are or will be separated horizontally, in other circumstances, changes in height are measured from the dimensions of the wireless communication tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

DD. "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by ~~federal or state~~applicable law, orders, and regulations, to allow its use by a utility, cable, or telecommunications carrier for a pole attachment.

EE. "Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or facilities within the ~~city's~~ public ways, for the purpose of offering telecommunications services within the city. (See also "Carrier.")

FF. "Telecommunications facilities or system" means the definition contained in ACC 5.84.020 with the exception of real estate, easements, and property.~~plant, equipment and facilities, including but not limited to, cables, wires, conduits, ducts,~~

~~pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services~~.

GG. "Telecommunications operator" means and includes every person who provides telecommunications services within the city over telecommunications facilities located within the city's public ways, without any ownership, management or control of the facilities.

HH. "Telecommunications provider" means and includes every person who utilizes facilities within the city's public ways to provide services outside the city only.

II. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.~~providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.~~

~~"Telecommunications system," see "Telecommunications facilities."~~

JJ. "Underground facilities" means utility, ~~and~~ telecommunications, and cable facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

KK. "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or state orders and regulations.

LL. "Utility easement" means any easement in which the city holds an interest in or an interest has been acquired, established, dedicated or devoted for city utility purposes.

MM. "Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways ~~of the city~~ and used or to be used for the purpose of providing utility or telecommunications services.

NN. "Utility provider" means any natural gas, electric power, pipeline, water or sewer not owned or operated by the City of Auburn, or other company desiring to utilize the public ways for transporting, purveying, or delivering bulk products, or providing power or gas services within the city, or needing to transport bulk product or services through the city to other destinations for commercial purposes.

OO. "WUTC" means the Washington State Utility and Transportation Commission. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.030 Business ~~registration~~ license required.

Except as otherwise provided herein, all ~~commercial~~ utilit~~y~~~~ies~~, cable operators, telecommunications carriers, operators and providers engaged in the business of transmitting, supplying or furnishing of ~~commercial~~ utility, cable or telecommunications service of any kind originating or terminating in the city, or utilizing facilities within the ~~city's~~ public ways to provide services exclusively outside of the city only, shall apply for and obtain a business ~~registration~~ license from the city pursuant to Chapter 5.84 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.040 Public way agreement required.~~

~~Except as otherwise provided herein, any commercial utility or telecommunications provider who desires to construct, install, operate, maintain, or otherwise locate facilities in, under, over or across any public way of the city for the sole purpose of providing service to persons and areas outside the city shall first obtain a public way agreement granting the use of such public ways from the city pursuant to Chapter 20.04 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.02.050~~20.02.040 Franchise required.

Except as otherwise provided herein, any ~~commercia~~l utility, telecommunications carrier or operator who desires to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way ~~of the city~~, and to also provide service to persons or areas inside the city or outside of the city, shall first obtain a franchise granting the use of such public ways from the city pursuant to Chapter ~~20.06~~20.04 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.060~~20.02.050 Cable television franchise required.

Except as otherwise provided herein, any ~~telecommunications carrier or other~~ person who desires to construct, install, operate, maintain or locate cable ~~or telecommunications~~ facilities in any public way in the city for the purpose of providing cable service to persons in the city shall first obtain a cable franchise from the city pursuant to Chapter ~~13.36~~20.06 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.070~~20.02.060 Facilities lease required.

No ~~commercial~~ utility, cable, telecommunications carrier, or other entity who desires to locate facilities or other equipment on city property shall locate such facilities or equipment on city property that are not public ways unless granted a facilities lease

from the city pursuant to Chapter 20.08 ACC. The city council reserves unto itself the sole discretion to lease such city property for utility, cable, telecommunications, and other facilities, and no vested or other right shall be created by this section or any provision of this title applicable to such facilities leases. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.080~~20.02.070 Authorizations necessary for Construction ~~permit required~~.

Except as otherwise provided herein, the holder of a ~~public way agreement,~~ franchise, cable franchise or lease granted pursuant to this title, ~~and the holders of cable franchises granted pursuant to Chapter 13.36 ACC~~, shall, in addition to said ~~public way agreement,~~ franchise, cable franchise, or lease, be required to obtain all applicable ~~construction~~ permits from the city pursuant to Chapter 12.24 ACC, Chapter 20.14 ACC and Title 18 ACC. No work, construction, development, excavation, substantial change, or installation of any equipment or facilities shall take place within the public ways or upon city property until such time as the ~~construction~~ appropriate permits are~~is~~ issued or lease terms are met. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.090~~20.02.080 Application to existing franchise, cable franchise, ~~ordinances, agreements,~~ leases, and permits and effect of other laws.

All ~~grantees,~~ franchisees, and lessees subject to this title are at all times subject to and must comply with all applicable existing and future federal, state and local laws, ordinances, codes, rules, regulations and orders.

A. In accepting and executing any franchise, cable franchise, or lease, the franchisee, or lessee acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinance, rules, and/or regulations necessary to protect the safety, health, and welfare of the public, subject to applicable law. A franchisee and/or lessee shall

comply with all applicable general laws, rules, and/or regulations enacted by the city pursuant to such power.~~This title shall have no effect on agreements in effect prior to adoption, unless otherwise provided, in any existing franchise ordinance, franchise agreement, lease, permit, agreement or other authorization to use or occupy a public way in the city until:~~

~~1. The expiration of said franchise ordinance, agreement, lease, permit, or authorization; or~~

~~2. The amendment to an unexpired franchise ordinance, franchise agreement, lease, permit, authorization, or agreement unless both parties agree to defer full compliance to a specific date not later than the expiration date provided therein.~~

B. Nothing in this title shall be deemed to create an obligation upon any person for which the city is forbidden to require pursuant to ~~federal, state, or other~~applicable law.

~~C. Upon expiration of the electrical and natural gas franchises in effect at time of adoption of this title, granted by Chapter 13.44 ACC, the franchise shall be renegotiated under the terms of this title.~~ (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.100 Reserved.~~

~~(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.02.110~~20.02.090 Fees and compensation not a tax.

The fees, charges and fines provided for in this title and any compensation charged and paid as provided herein, whether fiduciary or in-kind, are separate from, and additional to, any and all federal, state, local, and city taxes as may be levied, imposed or due from a ~~commercial~~ utility, cable, or telecommunications carrier,

operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of utility, cable, or telecommunications services. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.02.120~~20.02.100 Taxes are not to be a credit.

Any compensation paid as provided for in ~~public way agreements,~~ any franchises, cable franchises, and/or facility leases shall be exclusive of and in addition to all special assessments and taxes of whatever nature which are applicable to all other persons or entities doing business within the city, including, but not limited to, ad valorem taxes, sales taxes, corporate or business occupation taxes or other taxes or fees imposed or levied by any governmental entity. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.190~~20.02.110 Accounts, books and records.

The franchisee shall keep the city fully informed as to accounting methods and procedures in connection with the recording and reporting by the franchisee of all revenues and uncollectibles.

A. *City to Be Informed.* Franchisees shall keep the city fully informed as to all matters in connection with or which may affect the construction, reconstruction, removal, maintenance, operation and repair of franchisee's system located in public way(s), franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by franchisees of all revenues and uncollectibles. Franchisees shall comply with the city's determination regarding forms for reports, the time for reports, the frequency with which any reports are to be made, and whether reports are to be made under oath. The city acknowledges that a franchisee may be a reporting company under the Securities Exchange Act of 1934 and that shares of its stock are publicly traded. As such, a franchisee may be precluded from

disclosing certain sensitive, nonpublic information by virtue of rules and regulations promulgated under such act or otherwise.

B. *Accounts.* The franchisee shall keep complete and accurate books of account and records of its business and operations subject to this franchise chapter in accordance with generally accepted accounting principles or in accordance with accounting rules prescribed by applicable federal or state regulatory agencies. The city may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles. All subscribers who report a service address in the city of Auburn shall be subject to taxes and fees under this franchise. When required by the city, the franchisee shall make available a complete list of all service addresses within the city of Auburn. This list shall be available for review by the city at a local franchisee's business office. The list will be provided ~~on a computer disc in ASCII format sorted by zip code~~in a format acceptable to the city. It is understood this data is only needed for Auburn to perform an audit to ascertain that the correct subscribers are subjected to Auburn taxes and fees. As the city annexes new areas, those zip codes, if any, will be added.

C. *Access to Records.* The franchisee shall provide the city with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of the franchisee pertaining to this franchise chapter. The franchisee shall fully cooperate in making available its records and otherwise assisting in these activities. Such information shall be held in strict confidence by the city, as allowed by law, and used only for the purpose stated herein.

D. *Inquiries to Franchisee.* The city may, at any time, make inquiries pertaining to the franchisee's operation of its utility, cable, or telecommunications system within the franchise area. The franchisee shall respond to such inquiries on a timely basis. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.050~~20.02.120 Location of facilities.

All facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a ~~public way agreement,~~ franchise~~,~~ or lease agreement.

A. Unless otherwise provided in a ~~public way agreement,~~ franchise~~,~~ or lease, ~~a grantee,~~ franchisee~~,~~ or lessee with permission to occupy a public way or public property must locate its utility, cable, or telecommunications facilities underground in accordance with ACC Title 18 and Chapter 13.32A ACC.

B. Any newcomer in the public way must bear the full cost of discovering the location of any existing conflicts, coordination of the engineering plans to acquire the approvals of parties already in the public way, and relocating and/or mitigating such conflicts with preexisting facilities in conflict with the plans of the newcomer.

C. Whenever the city requires, a ~~grantee,~~ franchisee~~,~~ or lessee subject to this title~~,~~ and that currently occupies the public way shall relocate its facilities underground at no expense to the city. Such relocation shall be made concurrently with other planned work to minimize the disruption of the public ways as determined by the city engineer.

D. Should the available capacity of public ways prevent new uses in the future, all persons subject to this title shall negotiate with any interested newcomer the means of creating new capacity as required by ~~federal or state~~applicable law. The parties shall arrive at a mutually supportable agreement and submit the same to the city for review and comment. The parties will incorporate any ~~reasonable~~ city requirements for approval~~,~~ and resubmit the revised proposal for city ~~council~~ approval. If approved by the city ~~council~~, the parties will bear all costs associated with the proposal, and obtain the necessary permits to execute the approved plan from the city in accordance with this title and Chapter 12.24 ACC. The city shall bear no costs associated with resolution of capacity shortages within the public ways. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.140~~20.02.130 ~~Building moving~~Oversized loads.

Whenever any person shall have obtained permission from the city to use any street or public way for the purpose of moving any ~~building~~oversized loads, a ~~grantee,~~ franchisee~~,~~ or lessee, upon seven calendar days' written notice from the ~~city~~person with a permit to move the oversized loads, shall raise or remove, at the expense of the person desiring to move the ~~building~~oversized load, any of the ~~grantee,~~ franchisee~~,~~ or lessee's utility wires, poles, or facilities which may obstruct the moving of such ~~building~~oversized load; provided, that the person desiring to move the ~~building~~oversized load shall comply with all requirements of the city for the moving of ~~buildings~~oversized loads. Where more than one street is available for the moving of such oversized load, the oversized load shall be moved on such streets as shall cause the least interference, In such event, the city shall be responsible for determining the path of least interference. It is further provided that the person or persons moving such oversized load shall indemnify and save harmless said franchisee or lessee and the city from any and all damages or claims of any kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of a franchisee or lessee (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.450~~20.02.140 Care of trees along streets.

Upon prior written approval of the city and in accordance with city ordinances, any ~~grantee,~~ franchisee~~,~~ or lessee 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 facilities of the respective ~~grantee,~~ franchisee~~,~~ or lessee. The ~~grantee,~~ franchisee~~,~~ or lessee 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 ~~grantee,~~ franchisee~~,~~ or lessee 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 ~~a city~~

~~land clearing permit~~other permits as necessary from the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.460~~20.02.150 Use of utility poles and facilities of others.

~~Grantees and f~~Franchisees may seek to contract with the city or any appropriate board or agency thereof or with the holder or owner of any utility franchise in the city for the use, rental or lease of its or their poles and other structures and facilities for the purpose of extending, carrying or laying utility, cable, or telecommunications facilities, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the operation of its utility, cable, or telecommunications system. The city agrees that any public utility owning or controlling such poles or other structures or facilities may, without amendment to its franchise, allow, and is encouraged to allow, ~~grantees and~~ franchisees to make such use thereof pursuant to any agreement reached between the affected parties. City-owned poles are limited to street light and traffic signal poles which generally are not intended for use by others. The city reserves the right to determine on a case-by-case basis that particular circumstances require that a certain city-owned pole is not appropriate for use. No ~~grantee or~~ franchisee will utilize any city-owned poles prior to approval by the city engineer. Unless otherwise limited by applicable law, ~~A~~any compensation for uses of city-owned poles will be based upon the prevailing market rates for similar uses in the region. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.470~~20.02.160 Use of poles and facilities by city.

With respect to poles and trenches which are facilities and which are (1) wholly owned by a franchisee ~~or grantee~~, and (2) within the franchise area, the city, subject to franchisee's ~~or grantee's~~ prior written consent, may install and maintain city-owned overhead facilities upon such poles, and conduits in open trenches, for police, fire, illumination, and other noncommercial communications purposes, subject to the following:

A. Such installation and maintenance shall be completed at the city's expense;

B. The franchisee ~~or grantee~~ shall have no obligation under the indemnification provisions of this franchise ~~or public way agreement~~ for the installation or maintenance of such city-owned facilities or conduits;

C. Nothing herein shall require the franchisee ~~or grantee~~ to bear any cost or expense in connection with such installation and maintenance of city-owned facilities or conduits, nor shall such city installation delay or adversely ~~e~~affect franchisee's ~~or grantee's~~ construction schedule;

D. In no case shall the city attach to or come into contact with ~~grantee's or~~ franchisee's equipment. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.080~~20.02.170 Interference with the public ways.

No ~~grantee,~~ franchisee~~,~~ or lessee may locate or maintain its utility, cable or telecommunications facilities so as to unreasonably interfere with the use of the public ways by the city, by the general public or by other persons authorized to use or be present in or upon the public ways and public property. All such facilities which unreasonably interfere with the use of the ~~city's~~ public ways as determined by the public works director, shall be moved in accordance with provisions in ACC ~~20.10.130~~20.02.210, by the ~~grantee,~~ franchisee~~,~~ or lessee, at the ~~grantee,~~ franchisee~~,~~ or lessee's cost, temporarily or permanently, as determined by the public works director. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.210~~20.02.180 Leased capacity.

A ~~grantee,~~ franchisee~~,~~ or lessee shall have the right to ~~offer or provide~~ sublease capacity, ~~or~~ bandwidth, or other facilities to its customers consistent with such ~~permit,~~ franchise~~,~~ or lease; provided:

A. The sub-lessee first obtains a franchise, cable franchise, lease, or such applicable agreement with the City of Auburn in conformance with this Title 20 ACC; ~~The grantee, franchisee, or lessee shall furnish the city with a copy of any such lease or agreement between the grantee, franchisee, or lessee and the customer or sub-lessee or provide to the city's finance director sufficient information to determine whether the lessee or customer is subject to city taxes or assessments; and~~

B. The sub-lessee fulfills all requirements of Chapters 3.84 and 3.88 ACC regarding the reporting of all revenues subject to city taxes and assessments; and

C. The sub-~~L~~lessee must comply with the city's registration requirements in Chapter 5.84 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.090~~20.02.190 Damage to property.

No ~~grantee, franchisee,~~ or lessee, nor any person acting on behalf of a ~~grantee, franchisee,~~ or lessee shall take any action or permit any action to be taken which may impair or damage any city property, public ways ~~of the city~~, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.110~~20.02.200 Repair and emergency work.

In the event of an emergency, a ~~grantee, franchisee,~~ or lessee may commence such repair and emergency response work as required under the circumstances, provided the ~~grantee, franchisee,~~ or lessee shall notify the city in writing as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. The city may act without prior written notice in case of emergency. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.120~~20.02.210 Maintenance, abandonment, relocations or removal of facilities.

Each ~~grantee, franchisee,~~ or lessee shall maintain its facilities in good and safe condition and in a manner that complies with ~~all applicable federal, state and local requirements~~Applicable Law. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.130 Abandonment, relocation or removal of facilities.~~

Within 30 days or such other time frame as determined by the city, and in accordance with RCW 35.99.060, following written notice from the city, a ~~grantee, franchisee,~~ or lessee shall, at its sole expense, temporarily or permanently remove, relocate, change, or alter the position of any ~~commercial~~of its utility, cable or telecommunications facilities within the public ways or upon city property whenever the city public works director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

A. The construction, repair, maintenance, or installation of any city or other public improvement in or upon the public ways; and

B. The operations of the city, utility providers, or other governmental entity in or upon the public ways; and

C. Facilities are deemed by the city as abandoned due to failure to cure of the ~~grantee, franchisee,~~ or lessee.

However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within 24 hours. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.150~~20.02.220 Removal of unauthorized facilities.

Within 30 days following written notice from the city, any ~~commercial~~ utility, cable, telecommunications carrier, operator, lessee or other person who owns, controls, or maintains any unauthorized ~~cable or telecommunications~~ system, facility, or related

appurtenances within the public ways or upon property of the city shall, at its own expense, remove such system, facilities, or appurtenances from the public ways ~~of the city~~or property of the city. A utility, cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the ~~grantee, lessee,~~ or franchisee's ~~public way agreement,~~ franchise, or lease;

B. Upon leaving any system or facility within the public ways or upon property of the city, any such property of a ~~grantee, franchisee,~~ or lessee shall be deemed abandoned if left in place 90 days after expiration or termination of a ~~public way agreement,~~ franchise, or lease;

C. If the system or facility was constructed or installed without the prior approval of a ~~public way agreement,~~ franchise or lease;

D. If the system or facility was constructed or installed without the prior issuance of a required construction permit; or

E. If the system or facility was constructed or installed at a location not permitted by a ~~public way agreement,~~ franchise or lease.

Provided, however, that the city may, in its sole discretion, allow a ~~grantee,~~ franchisee~~,~~ or lessee or other such persons who may own, control, use, or maintain ~~commercial~~ utility, cable or telecommunications facilities within the public ways ~~of the city~~ or upon city property to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the city. Any plan for abandonment or removal of a ~~grantee's,~~ franchisee's~~,~~ or lessee's facilities must be first approved by the public works director, and all necessary permits must be obtained prior to such work. If the city, in its sole discretion, permits abandonment of facilities in place, ~~U~~upon permanent abandonment in place of the facilities such facilities ~~shall~~may, at the city's discretion become the city's property, and such persons shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. The provisions of this

section shall survive the expiration, revocation, or termination of a ~~public way agreement,~~ franchise, or lease granted under this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.160~~20.02.230 Emergency removal or relocation of facilities.

The city retains the right and privilege to cut or move any ~~commercial~~ utility, cable or telecommunications facilities located within the public ways ~~of the city~~ and upon city property, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The city shall not be liable to any utility, cable operator, telecommunications carrier, operator, or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the city's actions under this section. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.170~~20.02.240 Damage to facilities.

Unless directly and proximately caused by the willful, intentional, or malicious acts by the city, the city shall not be liable for any damage to or loss of any ~~commercial~~ utility, cable, or telecommunications facilities upon city property or within the public ways ~~of the city~~ as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such city property or within the public ways by or on behalf of the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.180~~20.02.250 Restoration of public ways, other ways, city property and public/private utility property.

A. When a ~~grantee,~~ franchisee, lessee, or any person acting on behalf such persons, does any work in or affecting any public ways, other ways, city property, or

public/private utilities located in the public ways, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the city.

B. If weather or other conditions do not permit the complete restoration required by this section, or other city codes, regulations or policies, the ~~grantee,~~ franchisee~~,~~ or lessee shall temporarily restore the affected public ways, other ways, or property. Such temporary restoration shall be at the ~~grantee's,~~ franchisee's~~,~~ or lessee's sole expense and the ~~grantee,~~ franchisee~~,~~ or lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A ~~grantee,~~ franchisee~~,~~ lessee or other person acting on behalf of such persons shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of such work in or affecting such public ways, other ways, or property.

D. The public works director or designee shall be responsible for inspection and final approval of the condition of the public ways, other ways, and city property following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of a ~~public way agreement,~~ franchise~~,~~ or lease~~, or other agreement~~ granted pursuant to this title or Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.190~~20.02.260 Facilities maps.

Each ~~grantee,~~ franchisee~~,~~ and lessee shall provide the city with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of their ~~commercial~~ utility, cable, or telecommunications facilities within the public ways and upon city property. Each ~~grantee,~~ franchisee~~,~~ and lessee shall provide the city

with updated maps annually or upon written request by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.220~~20.02.270 Insurance.

Unless otherwise provided in a ~~public way agreement,~~ franchise, cable franchise, or lease agreement, each ~~grantee,~~ franchisee~~,~~ or lessee shall, as a condition of the ~~permit or public way agreements,~~ franchises~~,~~ or leases, secure, and maintain at a minimum the following liability insurance policies insuring both the ~~grantee,~~ franchisee~~,~~ or lessee and the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee, franchisee, or lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

1. Five million dollars for bodily injury or death to each person;

2. Five million dollars for property damage resulting from any one accident; and

3. Five million dollars for all other types of liability;

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $3,000,000 for each person and $3,000,000 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000;

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000;

E. The liability insurance policies required by this section shall be maintained by the grantee, franchisee, or lessee throughout the term of the public way agreement, franchise, or lease, and such other period of time during which the grantee, franchisee, or lessee is operating without a public way agreement, franchise, or lease hereunder, or is engaged in the removal of its telecommunications facilities. The grantee, franchisee, or lessee shall provide an insurance certificate, together with an endorsement naming the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the city prior to the commencement of any work or installation of any utility or telecommunications facilities pursuant to said public way agreement, franchise, or lease. Any deductibles or self-insured retentions must be declared to and approved in writing by the city prior to the franchise becoming effective. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee, franchisee, or lessee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee, franchisee, or lessee's insurance shall be primary insurance as respects the city, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the city, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee, franchisee, or lessee's insurance and shall not contribute with it;

F. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain the following endorsement:

> It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 60 days after receipt by the City, by registered mail, (return receipt requested) of a written notice addressed to the City Clerk of such intent to cancel or not to renew.

G. Within 30 days after receipt by the city of said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the grantee, franchisee, or

lessee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this section. Any lapse in the required insurance coverage shall be cause for termination of any public way agreement, franchise, or lease. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.24020.02.280 Performance and construction suretyFinancial Security.

Before a public way agreement, franchise, or cable franchiselease granted pursuant to this title is effective, and as necessary thereafter, the grantee, franchisee, or lessee shall provide and deposit such moneys, bonds, letters of credit, or other instruments in form and substance acceptable to the city as may be required by this title or by an applicable public way agreement, franchise, or lease agreement. All performance bondsfinancial securities for grantees, franchisees, and lessees shall satisfy the minimum standards established by the public works departmentEngineering Design and Construction Standards at the time of the grantees', franchisees' acceptance, and lessees' application. (Construction bond section(s) of Standard Specifications for Road, Bridge, and Municipal Construction for Washington State Department of Transportation and American Public Works Association).

Construction bonds sureties shall be provided as required by Washington State laws. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.250 Security options.

A. In order to secure the conditions agreed to in any franchise or cable franchise agreement negotiated under this title, for the full term of such agreements, each grantee, franchisee, or lessee shall establish a permanent financial security in the form of a bond, assignment of funds, or an unconditional letter of credit from a Washington State bank with the city by either providing the city engineer a standing warranty bond or by depositing the amount of funds as follows in a Washington state

bank utilizing the city's standard assignment form, or by provision of the letter of credit. The amount of the financial security shall be 10 percent of the city engineer's estimate of the performance bond amount (ACC 20.10.260) based upon the total scope of work proposed within the public ways, or a minimum of $50,000, or such other whichever is less, or such lesser amount as determined by the public works director to be sufficient. The financial security shall be maintained at the sole expense of the grantee, franchisee, or lessee so long as any of the grantee, franchisee's, or lessee's utility, cable or telecommunications facilities are located within the public ways, or the franchisee provides services from facilities located in the public ways, of the city or upon city property and until released by the city. In the event a financial security involves a bank, the grantee, franchisee, or lessee is responsible for negotiating any interest that may accrue to the account during the duration of effect. Should the franchise or cable franchise agreement being secured be terminated, the financepublic works director will coordinate with other departments and determine if any portion of the security may be released by the city.

AB. The security shall secure the full and complete performance of the requirements of this title, including any costs, expenses, damages, or loss the city pays or incurs, including civil penalties, because of any failure attributable to the grantee, franchisee, or lessee to comply with any applicable legal requirements including, but not limited to, the codes, ordinances, rules, regulations, or permits of the city.

BC. Before the city executes on the financial security bond or any sums are withdrawn from the financial security fund, the city shall give written notice to the grantee, franchisee, or lessee:

1. Describing the act, default or failure to be remedied, or the damages, costs or expenses which the city has incurred by reason of grantee, franchisee's, or lessee's act, default, or failure;

2. Providing a reasonable opportunity for grantee, franchisee, or lessee to first remedy the existing or ongoing default or failure, if applicable;

3. Providing a reasonable opportunity for ~~grantee, franchisee, or lessee~~ to pay any moneys due the city before the city executes the ~~bond~~financial security or withdraws the amount thereof from the financial security ~~fund~~, if applicable; and

4. That the ~~grantee, franchisee, or lessee~~ will be given an opportunity to review the act, default or failure described in the notice with the city or designee.

~~C~~D. ~~Grantees, f~~Franchisees ~~and lessees~~ shall replenish the financial security ~~bond or fund~~ within 14 calendar days after written notice from the city that there is a deficiency in the amount of the ~~bond or fund~~financial security. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.260 Performance bond.~~

E. When the value of work proposed to be performed under any permit within the public way exceeds the amount of the financial security in this provision, the franchisee may be required to provide an additional financial security in a sufficient amount as determined by the city. All ~~performance bonds~~financial securities provided in accordance with this title shall comply with the minimum standards in Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.280~~20.02.290 Assignments or transfers of ~~public way agreements,~~ franchises, cable franchises, or leases.

The assignment or transfer of any business ~~registration~~license, ~~public way agreement,~~ franchise or lease subject to this title may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the ~~grantee,~~ franchisee~~,~~ or lessee, by operation of law or otherwise, without the prior written consent of the city, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No ~~public way agreement,~~ franchise~~,~~ or lease, subject to this title, shall be assigned or transferred before construction of such systems has been completed to the city's satisfaction without prior written consent of the city, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

B. The ~~grantee,~~ franchisee~~,~~ or lessee and the proposed assignee or transferee of the ~~public way agreement,~~ franchise~~,~~ or lease shall provide and certify the following information to the city not less than 90 calendar days prior to the proposed date of transfer:

1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment relating to the ~~public way agreement,~~ franchise or lease;

2. All information required by a ~~public way agreement,~~ franchise~~,~~ or lease applicant pursuant to this title with respect to the proposed transferee or assignee;

3. Any other information reasonably required by the city; and

4. A nonrefundable application fee in the amount established in the city's fee schedule.

C. No transfer shall be approved unless the assignee or transferee meets the requirements contained in ~~ACC 20.04.040(A) and (I)~~Title 20 ACC and can comply with the requirements of the ~~public way agreement,~~ franchise~~,~~ or lease.

D. Unless otherwise provided in a ~~public way agreement,~~ franchise~~,~~ or lease agreement, the ~~grantee,~~ franchisee~~,~~ or lessee shall reimburse the city for all direct and indirect costs and expenses reasonably incurred by the city in considering a request to transfer or assign a ~~public way agreement,~~ franchise~~,~~ or lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of a ~~public way agreement, franchise,~~ or lease without prior written approval of the city under this section or pursuant to a ~~public way agreement, franchise,~~ or lease agreement shall be void and is cause for termination of the ~~public way agreement, franchise,~~ or lease.

F. Notwithstanding anything contained herein to the contrary, transfer of cable franchises shall additionally be governed by applicable provisions of federal law, and issues involving transfers may be addressed in a cable franchise. (Ord. 6718 § 5 (Exh. E), 2019; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.290 Transactions affecting control of public way agreements, franchises, or leases.~~

G Any transactions which singularly or collectively result in a change of 50 percent or more of the ownership or working control of any ~~grantee,~~ franchisee~~,~~ or lessee of the ownership or working control of a utility, cable, or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the ~~grantee,~~ franchisee~~,~~ or lessee or of a utility, cable, or telecommunications system, or of control of the capacity or bandwidth of the ~~grantee,~~ franchisee~~,~~ or lessee's utility, cable, or telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring city approval pursuant to ~~ACC 20.10.280~~this provision. Transactions between affiliated entities are not exempt from the required city approval. A ~~grantee, franchisee,~~ or lessee shall promptly notify the city in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of a ~~grantee's,~~ franchisee's, or lessee's company. Every change, transfer, or acquisition of control of a ~~grantee's,~~ franchisee's~~,~~ or lessee's company shall cause a review of the proposed transfer. In the event that the city council adopts a resolution, ordinance, or other appropriate order opposing such change, transfer or acquisition of control that has been completed without prior city approval pursuant to this provision~~effected~~, the city may terminate the ~~public way agreement, franchise,~~ or lease. City approval shall not be required for mortgaging purposes or if said transfer is from a ~~grantee, franchisee,~~ or

lessee to another person or entity controlling, controlled by, or under common control with a ~~grantee,~~ franchisee~~,~~ or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.340~~20.02.300 Civil penalties.

A. In accordance with Chapter 1.25 ACC, unless otherwise provided herein, ~~A~~any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this title shall be subject to a penalty in an amount not less than $100.00 nor more than $1,000 per day for each violation from the date of each violation until compliance is achieved.

B. In addition to any penalty which may be imposed by the city ~~council~~, any person violating or failing to comply with any of the provisions of this title shall be liable for all damage to public or private property arising from such violation, and costs incurred by the city, including the cost of restoring the affected area to its condition prior to the violation.

C. The violator may show the city ~~council~~ as full or partial mitigation:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

D. The penalties which may be imposed by this section shall be collected by civil action brought by the city if not paid timely after penalty assessment by the city council. The public works director or designee shall notify the finance director in writing of the name of any person subject to the penalty, and the finance director

shall take appropriate action to collect the penalty. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.440~~20.02.310 Unfunded mandate.

The city intends that no federal or state requirement to promote the deregulation of utilities, cable, or telecommunications shall become an unfunded mandate requiring funding support from the city over and above its routine operations and maintenance budget to maintain the public ways. Therefore, ~~except as expressly provided to the contrary,~~ all costs incurred by a ~~grantee,~~ franchisee~~,~~ or lessee in complying with the terms and conditions of any franchise, cable franchise, lease, or other agreement subject to this title or any applicable laws, ordinances, codes, rules, regulations and/or orders or any action thereunder shall be the sole responsibility of the respective ~~grantee,~~ franchisee~~,~~ or lessee and shall not be the responsibility of or charged to the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.480~~20.02.320 Administration.

The public works director or designee shall administer all ~~public way agreements and~~ franchises subject to this title, and the ~~finance director~~mayor or designee shall administer all leases subject to this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

Chapter 20.04

~~PUBLIC WAY AGREEMENTS~~UTILITY AND TELECOMMUNCATION FRANCHISES

Sections:

20.04.010 ~~Public way agreements~~Franchise requirements.

20.04.020 ~~Public way agreement~~Franchise applications.

20.04.030 Notice of complete application, franchise negotiations and scheduling of ~~meeting~~public hearing on franchises.

20.04.040 Determination by the city.

20.04.050 Notification of council action and execution of agreement.

20.04.060 ~~Nonexclusive public way agreements~~Acceptance and effective date.

20.04.070 ~~Rights granted~~Nonexclusive franchise.

20.04.080 Term of ~~telecommunications public way~~franchise agreements.

20.04.090 ~~Specified route~~Rights granted.

20.04.100 ~~Service to city users~~Franchise territory.

20.04.110 ~~Amendment to public way agreements~~Franchise fees in addition to utility taxes.

20.04.120 ~~Renewal of public way agreements~~Nondiscrimination.

20.04.130 ~~Determination by city for renewal of public way agreements~~Amendment of franchise.

20.04.140 ~~Notification of council action on renewal of public way agreements and execution of agreements~~Renewal of franchise.

20.04.150 ~~Obligation to cure as a condition of renewal~~Determination by city for renewal of franchise.

20.04.160 ~~Reserved~~Obligation to cure as a condition of renewal.

20.04.170 ~~Annual fee for recovery of city costs~~Notification of council action on renewal of franchise agreements and execution of agreements.

20.04.180 Other city costs.

20.04.190 Compensation for use of public ways.

~~20.04.010 Public way agreements.~~

~~A public way agreement shall be required of any commercial utility or telecommunications provider who desires to occupy specific public ways of the city for the sole purpose of providing commercial utility or telecommunications services to persons or areas outside the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.04.020 Public way agreement applications.~~

~~Any person that desires a public way agreement pursuant to this title shall file an application with the city which shall include the following information:~~

~~A. The identify of the applicant, including all affiliates of the applicant;~~

~~B. A description of the commercial utility or telecommunications services that are or will be offered or provided by the applicant using its facilities;~~

~~C. A description of the transmission medium or transporting means that will be used by the applicant to offer or provide such telecommunications or utility services;~~

~~D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the city all in sufficient detail to identify:~~

~~1. The location and route requested for applicant's proposed facilities;~~

~~2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;~~

~~3. The location(s), if any, for interconnection with the utility or telecommunications facilities of other utility or telecommunications carriers, operators, and providers; and~~

~~4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;~~

~~E. If applicant is proposing to install above-ground and/or overhead facilities:~~

~~1. Evidence that surplus space is available for locating its utility or telecommunications facilities on existing utility poles along the proposed route;~~

~~2. Proof of compliance with city's zoning code; and~~

~~3. Demonstrate compatibility with existing and future street illumination systems;~~

~~F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:~~

~~1. The excess capacity currently available in such ducts or conduits before installation of applicant's utility or telecommunications facilities;~~

~~2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's utility or telecommunications facilities;~~

~~3. Evidence of ownership or a right to use such ducts or conduits;~~

~~G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:~~

~~1. The location proposed for the new ducts or conduits; and~~

~~2. The excess capacity that will exist in such ducts or conduits after installation of applicant's utility or telecommunications facilities;~~

~~H. A preliminary construction schedule and completion date;~~

~~I. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the utility or telecommunications services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission;~~

~~J. All deposits or charges required pursuant to this title;~~

K. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet security requirements in ACC 20.10.240 through 20.10.260;

L. A copy of an Auburn business license stamped and signed by the business license clerk, as designated by the mayor; and

M. A nonrefundable application fee as set forth in the Auburn fee schedule. (Ord. 6546 § 3, 2014; Ord. 5897 § 22, 2005; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.030 Notice of complete application and scheduling of meeting.

A. Within 30 calendar days after receipt of the public way agreement application, the city will complete review of the application to determine whether the application contains sufficient information as outlined in ACC 20.04.020 to proceed with processing. If during the 30-calendar-day review period, the city engineer determines that the application is incomplete, the city engineer will issue a letter to the applicant specifying the additional information necessary to complete the application. The applicant will be given 30 calendar days to respond to the request for additional information. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided following the procedure outlined in this subsection. If the applicant needs additional time to respond, the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. When satisfied that the application is complete, the city engineer will notify the applicant in writing that the application is complete and inform the applicant of the schedule for consideration by the city council. The city clerk will notify the applicant in

writing of the scheduled meeting. (Ord. 6532 § 32, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.040 Determination by the city.

Within 180 calendar days from the time of notification that the application is complete, under ACC 20.04.030(A), the city council shall reach a decision. The city council's decision to grant or deny, in whole or in part, an application for a public way agreement shall be based upon the following:

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant;

B. The capacity of the public ways to accommodate the applicant's proposed facilities;

C. The capacity of the public ways to accommodate additional utility, cable, and telecommunications facilities if the public way agreement is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the public way agreement is granted;

E. The public interest in minimizing the cost and disruption of construction within the public ways;

F. The service that applicant will provide to the community and/or the region;

G. The effect, if any, on public health, safety and welfare if the public way agreement is granted;

H. The availability of alternate routes and/or locations for the proposed facilities;

I. Applicable federal and state utility and telecommunications laws, regulations and policies;

J. The ability to avoid or mitigate, to the city's satisfaction, future conflicts with the operation, repair, replacement, and maintenance of city-owned and other public/private utilities;

K. The ability of the applicant to stabilize existing pavement structures prior to disturbance in a manner sufficient to ensure future deterioration is not accelerated by virtue of the installed facilities, and/or the ability and willingness of the applicant to fully mitigate such damages to the extent that they may prove unavoidable to the satisfaction of the city. Such security for the pavement's integrity may include additional periods of warranty bonding for up to five years from the date of completion of work as determined by the city engineer;

L. Demonstrated ability and commitment to meet city bonding and security requirements established in ACC 20.10.240 through 20.10.260 and Chapter 12.24 ACC; and

M. Such other factors as may demonstrate that the public way agreement to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.050 Notification of council action and execution of agreement.

Upon the city council's decision, the public works director shall notify the applicant of the decision including reason(s) for denial and instruct the applicant of the procedure to follow to complete execution of the agreement if approved by the city council. No public way agreement shall be deemed to have been granted hereunder until the applicant and the city have fully executed a written agreement approved by the city council setting forth the particular terms and provisions under which the grantee has been granted the right to occupy and use public ways of the city and the applicant

has provided the security deposits and proof of insurance as required by Chapter 20.10 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.060 Nonexclusive public way agreements.

No public way agreement granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the city for delivery of telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.070 Rights granted.

No public way agreement granted under this title shall convey any right, title or interest in the public ways, but shall be deemed an authorization only to use and occupy the public ways for the limited purposes and term stated in the public way agreement. Further, no public way agreement shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.080 Term of telecommunications public way agreements.

By virtue of the uncertainties created by the Act, unless otherwise specified in an existing public way agreement, no agreement granted hereunder shall be in effect for a term exceeding five years. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.090 Specified route.

A public way agreement granted under this title shall be limited to a use of public ways specified and defined in the agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.04.100 Service to city users.~~

~~A grantee shall be permitted to use public ways to offer or provide utility or telecommunications services to persons or areas within the city only upon city council approval of a telecommunications franchise agreement pursuant to this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.04.110 Amendment to public way agreements.~~

~~A new application shall be required of any commercial utility or telecommunications provider who desires to extend or locate its facilities in public ways of the city which are not included in a public way agreement previously granted under this title. If a grantee is required by the city to locate or relocate its facilities in public ways not included in a previously granted public way agreement, the city shall grant an amendment to the agreement without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.04.120 Renewal of public way agreements.~~

~~A provider that desires to renew its public way agreement in effect under this chapter for an additional term not to exceed five years shall, not more than 180 days nor less than 120 days before expiration of the public way agreement in effect, file an application, which is determined as complete in accordance with ACC 20.04.030, with the city for renewal which shall include the following:~~

~~A. The information required pursuant to ACC 20.04.020;~~

~~B. Any information required pursuant to the public way agreement between the city and the grantee;~~

~~C. All deposits or charges required pursuant to this chapter; and~~

D. A nonrefundable application fee as set forth in the Auburn fee schedule. (Ord. 6546 § 4, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.130 Determination by city for renewal of public way agreements.

The process specified in ACC 20.04.030 for determining and notifying the applicant of completeness of application shall be used for renewals. Within 120 days after receiving a complete application for renewal, following the procedures in ACC 20.04.040, the city council shall grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for the renewal of a public way agreement shall, in addition to the criteria set forth in ACC 20.04.040, be based upon the following:

A. The continuing capacity of the public ways to accommodate the applicant's existing facilities; and

B. The applicant's compliance with the requirements of this title and the public way agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.140 Notification of council action on renewal of public way agreements and execution of agreements.

Once the city council has decided on the renewal application, the procedures outlined in ACC 20.04.050 shall be followed for execution of any agreement renewals. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.150 Obligation to cure as a condition of renewal.

No public way agreement shall be renewed until any ongoing violations or defaults in the grantee's performance under the public way agreement, or of the requirements of

this title, have been cured, or a plan, secured by a sufficient bond or deposit of funds to the city's satisfaction, detailing the corrective action to be taken by the grantee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.160 Reserved.

(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.170 Annual fee for recovery of city costs.

Each public way agreement granted under this title is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid as reimbursement for the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users; provided further, that the compensation required from any utility or telecommunications provider or carrier engaged in the "telephone business," as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.180 Other city costs.

All grantees shall, within 30 days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the public way agreement. In addition, all grantees shall, within 30 days after written demand, reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the grantee's facilities. All grantees shall, within 30 days after written demand, reimburse the city for the grantee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering

any city facility as a result of the construction or the presence in the public ways of the grantee's facilities. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.01020.04.010 Franchise requirements.

A franchise shall be required of any commercial utility or telecommunications operator or carrier or other person who desires to occupy public ways of the city and to provide telecommunications or commercial utility services to any person or area in the city or outside the city; provided, however, that a public way agreementRight-of-Way Use permit may be approved in accordance with the provisions of this title instead of a franchiseChapter 12.60 ACC in the following circumstances:

A. A privately owned utility or telecommunications network or telecommunications system which is operated solely for purposes of serving itself. An example of such a network or telecommunications system includes, but is not limited to, autility or telecommunications networkfacilities connecting two business facilities under common ownership or control, when said facilities are not offered to other business entities or persons.

B. De minimis uses of public ways made in conjunction with a wireless telecommunications facility located entirely upon publicly or privately owned propertyA cable system as defined in ACC 5.84.020, shall be governed by the procedures of Chapter 20.06 ACC rather than the requirements of this Chapter. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.02020.04.020 Franchise applications.

Any person who desires a telecommunications or a commercial utility franchise pursuant to this title shall file an application with the city public works department which, in addition to the information required by ACC 20.04.020,An applicant for an initial franchise to construct, operate, and maintain a utility or telecommunications system within the city shall file an application in a form prescribed by the city,

accompanied by a nonrefundable franchise application fee in the amount set forth in the City of Auburn fee schedule. The application shall include the following:

A. The identity of the applicant, including all affiliates of the applicant;

B. A description of the utility or telecommunications services that are or will be offered or provided by the applicant;

C. A description of the facilities, transmission medium or transporting means that will be used by the applicant to offer or provide such utility or telecommunications services;

D Applications proposing citywide facilities shall submit conceptual plans showing the general route or locations of facilities. Applications proposing site specific facilities shall submit plans in compliance with the City's Engineering Design Standards;

E Evidence of ownership or a right to use existing utility or telecommunications facilities such as poles, ducts, conduit or other facilities which the applicant intends to use or lease;

F Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the utility or telecommunications services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission;

AG. Whether the applicant intends to provide cable service~~, video dialtone service~~ or other multi-channel video programming service, and sufficient information to determine whether such service is subject to cable franchising under Chapter 20.06 ACC;

~~B. An accurate map showing the location of any existing utility or telecommunications facilities in the city that applicant intends to use or lease so that~~

~~the city can keep track of various systems using the public way(s) to prevent interference between the users;~~

~~C. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational and governmental institutions, if any;~~

~~D. A description of applicant's service, access and line extension policies;~~

~~E~~H. The area or areas of the city the applicant desires to serve and an initial schedule for build-out to the entire franchise area;

~~F. The applicant's intended means and methods of providing service and whether shared use of other utility poles or conduits is envisioned;~~

~~G. All fees, deposits or charges required pursuant to this chapter;~~

~~H~~I. Such other and further information as permitted by ~~federal and state~~applicable law as may be requested by the city;

~~I~~J. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet financial security requirements in ACC ~~20.10.240 through 20.10.260~~20.02.280;

~~J~~K. A copy of an Auburn business license stamped and signed by the business license clerk, as designated by the mayor; and

~~K~~L. A nonrefundable application fee and other charges as set forth in the Auburn fee schedule. (Ord. 6546 § 5, 2014; Ord. 5897 § 23, 2005; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.030~~20.04.030 Notice of complete application, franchise negotiations and scheduling of public hearing on franchises.

A. *Notice of Complete Application.* Within 30 calendar days after receipt of the franchise application, the city will complete review of the application to determine whether the application contains sufficient information as outlined in ACC ~~20.06.020~~20.04.020 to proceed with processing. If during the 30-calendar-day review period, the city engineer determines that the application is incomplete, the city engineer will issue a letter to the applicant specifying the additional information necessary to complete the application. The applicant will be given 30 calendar days to respond. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided. If the applicant needs additional time to respond the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. Franchise Negotiations. When satisfied that the application is complete, the city will notify the applicant in writing that the application is complete. At such time franchise negotiations may commence.

~~B~~C. *Scheduling of Public Hearing.* ~~When satisfied that the application is complete~~After completion of negotiations, the city engineer will notify the applicant in writing ~~that the application is complete and inform the applicant~~ of the schedule for consideration by the city council in accordance with RCW 35.99.030. The city council will schedule the hearing to consider the proposed franchise, and the city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 6532 § 33, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.040~~20.04.040 Determination by the city.

Within ~~180~~120 calendar days from the time of notification that the application is complete or as otherwise permitted by RCW 35.99.030, under ACC ~~20.06.030(A)~~20.04.030(A), the city shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this title, the city council shall conduct a public hearing and make a decision based upon the criteria set forth below. Pursuant to Section 253(c) of the Federal Communications Act, public disclosure of any fees as compensation for use of the public ~~right-of-~~way is required, and RCW 35A.47.040 provides that the city council shall not approve any franchise hereunder until the next regularly scheduled council meeting following the public hearing. If the application is denied, in whole or in part, the written determination shall include the reason(s) for denial. The decision to grant or deny, in whole or in part, an application for a utility or telecommunications franchise shall be based upon the following:

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the ~~activities proposed~~ services to be provided by the applicant;

B. The capacity of the public ways to accommodate the applicant's proposed facilities;

C. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted;

E. The public interest in minimizing the cost and disruption of construction within the public ways;

F. The service that applicant will provide to the community and region;

G. The effect, if any, on public health, safety and welfare if the franchise requested is granted;

H. The availability of alternate routes and/or locations for the proposed facilities;

I. Applicable ~~federal and state utility and telecommunications~~ laws, regulations and policies;

J. The ability to avoid, or mitigate to the city's satisfaction, future conflicts with the operation, repair, replacement, and maintenance of city-owned and other ~~commercial~~ utilities;

K. The ability of the applicant to stabilize existing pavement structures prior to disturbance in a manner sufficient to ensure future deterioration is not accelerated by virtue of the installed facilities, and/or the ability and willingness of the applicant to fully mitigate such damages to the extent that they may prove unavoidable to the satisfaction of the city. Such security for the pavement's integrity may include additional periods of warranty bonding for up to five years from date of completion of work as determined by the city engineer;

L. Demonstrated ability and commitment to meet city bonding and financial security requirements established in ACC ~~20.10.240 through 20.10.260~~20.02.280 and Chapter 12.24 ACC; and

M. Such other factors as may demonstrate that the franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.050~~20.04.050 Notification of council action and execution of franchise.

Upon the city council's decision, the public works director shall notify the applicant of the decision, including reason(s) for any denial, and instruct the applicant of the procedure to follow to complete execution of the agreement if approved by the city council. No franchise shall be deemed to have been granted hereunder until after the public hearing and city council approval of a written agreement setting forth the

particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways ~~of the city~~ and both the city and applicant have fully executed the franchise and the applicant has provided the financial security, ~~deposits and~~ proof of insurance and any outstanding fees as required by Chapter ~~20.10~~20.02 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.020~~20.04.060 Acceptance and effective date.

No ~~public way agreement,~~ franchise~~, or lease~~ granted pursuant to the provisions of this title shall become effective unless and until the ordinance or other city action granting the same has become effective. Within 30 days after the effective date of the ordinance or other city action granting a ~~public way agreement,~~ franchise~~, or lease,~~ or within such extended period of time as the council in its discretion may authorize, the applicant shall file with the city clerk an unconditional written acceptance of the ~~public way agreement,~~ franchise~~, or lease,~~ in a form satisfactory to the city attorney, together with the ~~bonds,~~ insurance policies, financial ~~and~~ security, and any outstanding fees ~~fund~~ required by this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.060~~20.04.070 Nonexclusive franchise.

No franchise granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways ~~of the city~~ for delivery of utility or telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.070~~20.04.080 Term of franchise agreements.

~~By virtue of the uncertainties created by the Act, unless otherwise specified in an existing franchise agreement, a telecommunications franchise granted by the city~~

~~pursuant to this title shall be valid for a term not to exceed five years.~~Unless otherwise specified in a franchise agreement, the term of any franchise agreement, granted hereunder shall not exceed fifteen years at the sole discretion of the City. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.080~~20.04.090 Rights granted.

No franchise granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the franchise. Further, no franchise shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.090~~20.04.100 Franchise territory.

Unless otherwise provided in the franchise ordinance, a franchise granted under this chapter shall authorize the franchisee to operate in the public ways throughout the city when a permit to install the necessary facilities has been approved by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.100~~20.04.110 Franchise fees in addition to utility taxes.

Revenue derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations, as determined by Title 3 ACC. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by applicable law, and in no event may the combined utility tax and franchise fee exceed the amount permitted by applicable law. (Ord. 6546 § 6, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.110~~20.04.120 Nondiscrimination.

A franchisee which purports to serve the general public shall make its utility or telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this title shall prohibit a franchisee from making any reasonable classifications among differently situated customers. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.120~~20.04.130 Amendment of franchise.

Except as otherwise provided within an existing franchise ordinance, a new franchise application shall be required of any ~~commercial~~ utility or telecommunications carrier or operator that desires to extend its franchise territory or to locate its utility or telecommunications facilities in public ways ~~of the city~~ which are not included in a franchise previously granted under this title. If a franchisee is required by the city to locate or relocate its facilities in public ways not included in a previously granted franchise, the city shall grant a franchise amendment without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.130~~20.04.140 Renewal of franchise.

A franchisee that desires to renew its franchise under this chapter for an additional five-year term shall, not ~~more than 240 days nor~~ less than 180 days before expiration of the franchise in effect, file an application, which is determined as complete in accordance with ACC ~~20.06.030~~20.04.030, with the city for a renewal of its franchise which shall include the following:

A. The information required pursuant to ACC ~~20.06.020~~20.04.020;

B. Any information required pursuant to the franchise agreement between the city and the franchisee;

C. ~~All deposits or charges required pursuant to this chapter~~Financial security, proof of insurance and any outstanding fees as required by Chapter 20.02 ACC;

D. A nonrefundable application fee in the amount as set forth in the Auburn fee schedule. (Ord. 6546 § 7, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.140~~20.04.150 Determination by city for renewal of franchise.

The process specified in ACC ~~20.06.030~~20.04.030 for determining and notifying of completeness of application shall be used for renewals. Within 120 calendar days after receiving a complete application for renewal or such time as permitted by RCW 35.99.030, following the procedures in ACC ~~20.06.030~~20.04.030, the city council shall grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. Prior to granting or denying renewal of a franchise under this chapter, in whole or in part, the city council shall conduct a public hearing and make a decision based upon the criteria set forth below in addition to all criteria in ACC ~~20.06.040~~20.04.040.

A. The continuing capacity of the public ways to accommodate the applicant's existing facilities.

B. The applicant's compliance with the requirements of this title and the franchise agreement.

C. Applicable ~~federal, state and local utility and telecommunications~~ laws, rules and policies.

D. Such other factors as may demonstrate that the continued franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.150~~20.04.160 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this title, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.04.140~~20.04.170 Notification of council action on renewal of ~~public way~~franchise agreements and execution of agreements.

Once the city council has decided on the renewal application, the procedures outlined in ACC 20.04.050 shall be followed for execution of any agreement renewals. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.170~~20.04.180 Other city costs.

All franchisees shall, within 30 days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement. In addition, all franchisees shall, within 30 days after written demand, reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the franchisee's utility or telecommunications facilities. Finally, all franchisees shall, within 30 days after written demand, reimburse the city for the franchisee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering any city facility as a result of the presence in the public way of the franchisee's utility or telecommunications facilities. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.180~~20.04.190 Compensation for use of public ways.

A. The city finds that the public ways to be used by ~~commercial utilities and~~utility or telecommunications carriers and operators in the operation of utility or telecommunications systems within the boundaries of the franchise are valuable public properties, acquired and maintained by the city at great expense to its taxpayers, and that the grant of use of said public ways is a valuable property right, without which ~~grantees and~~ franchisees would be required to invest substantial capital in public way costs and acquisitions; therefore, ~~grantees and~~ franchisees shall pay the city as a general compensation for the use of the public way during each year of the term of a franchise a franchise fee as determined by city council, not to exceed six percent of gross revenues for each quarter of each calendar year. Franchisees shall pay the franchise fee mandated by this chapter but the city acknowledges and understands that such amount (and any other fees, assessments, or taxes imposed on franchisees not described in subsection E of this section) shall appear as a line item on the bill sent to, and shall be collected from, the subscribers; provided further, that the compensation required from any telecommunications operator or carrier engaged in the "telephone business," as defined in RCW 82.04.065, shall be consistent with RCW 35.21.860.

B. *Annual Franchise Fee Adjustments.* The initial annual franchise fee percentage shall be the amount permitted by applicable law of gross revenues unless and until it is further adjusted by city council. Any such adjustment shall occur at least 60 days before any subsequent annual anniversary date. Any adjustment shall become effective on the subsequent annual anniversary date.

C. *Quarterly Payment.* Franchisees shall forward by check, cashier's check, other certified funds or electronic payment in the form of a wire or Direct Deposit (ACH) ~~wire transfer~~ an amount equal to this quarterly payment by the fifteenth day of the second calendar month immediately following the close of the calendar quarter for which the payment is calculated.

D. *Late Payment.* In the event any quarterly payment is made after noon on the date 10 days after the date due, franchisees shall pay a late payment penalty as shown in the city's fee schedule.

E. *Fees and Compensation Not a Tax.* The fees, charges and fines provided for in this title and any compensation charged and paid for the franchisee's use of the ~~city's~~ public ways, whether "fiduciary or in kind," are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a ~~commercial~~ utility, telecommunications carrier, operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of utility or telecommunications services.

F. *Ruling of Unenforceability.* The compensation required from any ~~commercial~~ utility, telecommunications carrier, operator, or provider shall be as provided by applicable law. In the event any franchise fee shall be held unenforceable by a court of law which has jurisdiction over the city, franchisees shall pay the equivalent amount paid in franchise fees as a city utility tax which shall be applied retroactively to time periods during which the franchise fee was determined to be unenforceable.

G. *Quarterly Report.* In order to properly determine the gross revenues received by franchisees, the franchisee shall, on the same date that each quarterly payment is made, file with the director of finance a sworn copy of a report, in a form acceptable to the city, in sufficient detail to itemize revenues from each of the revenue categories. The city may, if it sees fit and at its own expense, have the books and records of franchisees examined by a representative of said city to ascertain the correctness of the reports agreed to be filed herein. Neither the acceptance of any payment nor any subsequent review shall be deemed an agreement by the city that the correct payment was paid, absent a fully authorized written release by the city on any such payments or on such reports. Any necessary prorations shall be made in the first and last year of each term of the franchise. Any city request for access to books and records shall be allowed by the franchisee at reasonable times and for reasonable purposes. Such information shall be held in strict confidence by the city as allowed by applicable law and used only for the purpose stated herein.

H. *Recalculation at End of Compensation Year.* At the end of each calendar year, franchisees shall recalculate the total general compensation actually due. If additional amounts are due the city by franchisee, said amounts shall be paid by the fifteenth day of February following the calendar year during which such amounts were originally due. If amounts are found to be due the franchisees by the city, said amounts shall be credited by the fifteenth day of February during which such amounts were originally due. Any necessary prorations will be made.

I. *Taxes Are Not to Be a Credit.* The compensation paid under this franchise shall be exclusive of and in addition to all special assessments and taxes of whatever nature which are applicable to all other persons or entities doing business within the city, including, but not limited to, ad valorem tax, sales tax, corporate or business occupation taxes or other taxes or fees imposed or levied by any governmental entity.

J. *Utility Tax Liability – Franchise Fees.* Revenues derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by applicable law, and in no event may the combined utility tax and franchise fee exceed six percent of gross revenues in accordance with RCW 35.21.870. Franchise fees, if applicable, shall be levied on a nondiscriminatory basis.

K. *Rights of City.* Payment of money under any franchise shall not in any way limit or inhibit any of the privileges or rights of the city, except insofar as city's privileges or rights are expressly limited or inhibited by the terms of a franchise.

L. *Annual Report.* Franchisees shall file annually with the director of finance, no later than 90 days after the end of franchisee's fiscal year, an unaudited statement of revenues (for that fiscal year just ended) attributable to the operations of the franchisee's utility or telecommunications system within the city pursuant to the franchise agreement. The statement shall present a detailed breakdown of gross revenues and uncollectible accounts for the year. The city may, if it sees fit, have

such report audited by an independent certified public accountant of its choosing. If the audit reveals an ~~underpayment~~ error in payment by franchisees of more than ~~five~~two percent unless otherwise agreed to in a franchise agreement, then franchisees shall pay for the costs of the audit. If the audit reveals an error in payment of ~~five~~two percent or less, the city shall pay the costs of the audit. The report will summarize those accounts reconciled to be within the franchise area by the city's quarterly review.

M. *Circumventing Payments.* Any transaction(s) which have the effect of circumventing payment of the required franchise fees and/or evasion of payment of franchise fees or any payments due the city under a franchise by non-collection or non-reporting of gross revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by franchisees are prohibited.

~~N. *Best Rates.* As allowed by applicable law, part of the compensation to the city for the grant of any telecommunications franchise, the city shall be entitled to obtain subscriptions, at the city's discretion, to the communications service at franchisee's lowest comparable rate applicable to any government body or municipality of the state of Washington. In addition, city shall be entitled to franchisee's lowest comparable rate applicable to any governmental body or municipality of the state of Washington for purchase and/or lease, should the city determine to purchase and/or lease equipment or modems applicable to government bodies or municipalities in the state of Washington for purposes of accessing the communications service.~~ (Ord. 6718 § 3 (Exh. C), 2019; Ord. 6546 § 8, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

Chapter 20.06

CABLE FRANCHISES

Sections:

20.06.010 ~~Franchise requirements~~Purpose.

20.06.020 ~~Franchise applications~~Cable franchise conditions and term.

20.06.030 ~~Notice of complete application and scheduling of public hearing~~Cable franchise application.

20.06.040 ~~Determination by the city~~Scheduling public hearing; notice; criteria for approval.

20.06.050 ~~Notification of council action and execution of franchise~~Determination by the city.

20.06.060 ~~Nonexclusive franchise~~Application instructions and requirements for competitive cable franchise.

20.06.070 ~~Term of franchise~~Acceptance.

20.06.080 ~~Rights granted~~Rules and regulations by the city.

20.06.090 ~~Franchise territory~~Technical standards and maintenance.

20.06.100 ~~Franchise fees in addition to utility taxes~~Construction Standards.

20.06.110 ~~Nondiscrimination~~Undergrounding.

20.06.120 ~~Amendment of franchise~~Construction in public ways.

20.06.130 ~~Renewal of franchise~~Safety requirements.

20.06.140 ~~Determination by city for renewal of franchise~~Rates.

20.06.150 ~~Obligation to cure as a condition of renewal~~Customer service.

20.06.160 ~~*Reserved*~~Telephone response.

20.06.170 ~~Other city costs~~Failure to improve customer service.

20.06.180 ~~Compensation for use of public ways~~Franchise fee.

20.06.190 ~~Accounts, books and records~~Record Inspection.

20.06.200 Reports.

20.06.210 Programming.

20.06.220 Nondiscrimination.

20.06.230 Inconsistency.

20.06.240 Severability.

~~20.06.010 Franchise requirements.~~

~~A franchise shall be required of any commercial utility or telecommunications operator or carrier or other person who desires to occupy public ways of the city and to provide telecommunications or commercial utility services to any person or area in the city; provided, however, that a public way agreement may be approved in accordance with the provisions of this title instead of a franchise in the following circumstances:~~

~~A. A privately owned telecommunications network or telecommunications system which is operated solely for purposes of serving itself. An example of such a network or telecommunications system includes, but is not limited to, a telecommunications network connecting two business facilities under common ownership or control, when said facilities are not offered to other business entities or persons.~~

~~B. De minimis uses of public ways made in conjunction with a wireless telecommunications facility located entirely upon publicly or privately owned property. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.020 Franchise applications.~~

~~Any person who desires a telecommunications or a commercial utility franchise pursuant to this title shall file an application with the city public works department which, in addition to the information required by ACC 20.04.020, shall include the following:~~

~~A. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising;~~

~~B. An accurate map showing the location of any existing utility or telecommunications facilities in the city that applicant intends to use or lease so that~~

~~the city can keep track of various systems using the public way(s) to prevent interference between the users;~~

~~C. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational and governmental institutions, if any;~~

~~D. A description of applicant's service, access and line extension policies;~~

~~E. The area or areas of the city the applicant desires to serve and an initial schedule for build-out to the entire franchise area;~~

~~F. The applicant's intended means and methods of providing service and whether shared use of other utility poles or conduits is envisioned;~~

~~G. All fees, deposits or charges required pursuant to this chapter;~~

~~H. Such other and further information as permitted by federal and state law as may be requested by the city;~~

~~I. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet security requirements in ACC 20.10.240 through 20.10.260;~~

~~J. A copy of an Auburn business license stamped and signed by the business license clerk, as designated by the mayor; and~~

~~K. A nonrefundable application fee as set forth in the Auburn fee schedule. (Ord. 6546 § 5, 2014; Ord. 5897 § 23, 2005; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.030 Notice of complete application and scheduling of public hearing.~~

~~A. *Notice of Complete Application.* Within 30 calendar days after receipt of the franchise application, the city will complete review of the application to determine~~

whether the application contains sufficient information as outlined in ACC 20.06.020 to proceed with processing. If during the 30-calendar-day review period, the city engineer determines that the application is incomplete, the city engineer will issue a letter to the applicant specifying the additional information necessary to complete the application. The applicant will be given 30 calendar days to respond. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided. If the applicant needs additional time to respond the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. *Scheduling of Public Hearing.* When satisfied that the application is complete, the city engineer will notify the applicant in writing that the application is complete and inform the applicant of the schedule for consideration by the city council. The city council will schedule the hearing and the city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 6532 § 33, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.040 Determination by the city.

Within 180 calendar days from the time of notification that the application is complete, under ACC 20.06.030(A), the city shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this title, the city council shall conduct a public hearing and make a decision based upon the criteria set forth below. Pursuant to Section 253(c) of the Federal Act, public disclosure of any fees as compensation for use of public right-of-way is required, and RCW 35A.47.040 provides that the city council shall not approve any franchise hereunder until the next regularly scheduled council meeting following the public hearing. If the application is denied, in whole or in part, the written determination shall include the reason(s) for denial. The decision to grant or deny, in

~~whole or in part, an application for a telecommunications franchise shall be based upon the following:~~

~~A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant;~~

~~B. The capacity of the public ways to accommodate the applicant's proposed facilities;~~

~~C. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted;~~

~~D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted;~~

~~E. The public interest in minimizing the cost and disruption of construction within the public ways;~~

~~F. The service that applicant will provide to the community and region;~~

~~G. The effect, if any, on public health, safety and welfare if the franchise requested is granted;~~

~~H. The availability of alternate routes and/or locations for the proposed facilities;~~

~~I. Applicable federal and state utility and telecommunications laws, regulations and policies;~~

~~J. The ability to avoid, or mitigate to the city's satisfaction, future conflicts with the operation, repair, replacement, and maintenance of city-owned and other commercial utilities;~~

~~K. The ability of the applicant to stabilize existing pavement structures prior to disturbance in a manner sufficient to ensure future deterioration is not accelerated by~~

virtue of the installed facilities, and/or the ability and willingness of the applicant to fully mitigate such damages to the extent that they may prove unavoidable to the satisfaction of the city. Such security for the pavement's integrity may include additional periods of warranty bonding for up to five years from date of completion of work as determined by the city engineer;

L. Demonstrated ability and commitment to meet city bonding and security requirements established in ACC 20.10.240 through 20.10.260 and Chapter 12.24 ACC; and

M. Such other factors as may demonstrate that the franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.050 Notification of council action and execution of franchise.

Upon the city council's decision the public works director shall notify the applicant of the decision, including reason(s) for any denial, and instruct the applicant of the procedure to follow to complete execution of the agreement if approved by the city council. No franchise shall be deemed to have been granted hereunder until after the public hearing and city council approval of a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the city and both the city and applicant have fully executed the franchise and the applicant has provided the security deposits and proof of insurance as required by Chapter 20.10 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.060 Nonexclusive franchise.

No franchise granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the city for delivery of utility or telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.06.070 Term of franchise.~~

~~By virtue of the uncertainties created by the Act, unless otherwise specified in an existing franchise agreement, a telecommunications franchise granted by the city pursuant to this title shall be valid for a term not to exceed five years. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.080 Rights granted.~~

~~No franchise granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the franchise. Further, no franchise shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.090 Franchise territory.~~

~~Unless otherwise provided in the franchise ordinance, a franchise granted under this chapter shall authorize the franchisee to operate in the public ways throughout the city when a permit to install the necessary facilities has been approved by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.100 Franchise fees in addition to utility taxes.~~

~~Revenue derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by law, and in no event may the combined utility tax and franchise fee exceed the amount permitted by law. (Ord. 6546 § 6, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.110 Nondiscrimination.~~

~~A franchisee which purports to serve the general public shall make its utility or telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this title shall prohibit a franchisee from making any reasonable classifications among differently situated customers. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.120 Amendment of franchise.~~

~~Except as otherwise provided within an existing franchise ordinance, a new franchise application shall be required of any commercial utility or telecommunications carrier or operator that desires to extend its franchise territory or to locate its utility or telecommunications facilities in public ways of the city which are not included in a franchise previously granted under this title. If a franchisee is required by the city to locate or relocate its facilities in public ways not included in a previously granted franchise, the city shall grant a franchise amendment without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.130 Renewal of franchise.~~

~~A franchisee that desires to renew its franchise under this chapter for an additional five-year term shall, not more than 240 days nor less than 180 days before expiration of the franchise in effect, file an application, which is determined as complete in accordance with ACC 20.06.030, with the city for a renewal of its franchise which shall include the following:~~

~~A. The information required pursuant to ACC 20.06.020;~~

~~B. Any information required pursuant to the franchise agreement between the city and the franchisee;~~

~~C. All deposits or charges required pursuant to this chapter;~~

~~D. A nonrefundable application fee in the amount as set forth in the Auburn fee schedule. (Ord. 6546 § 7, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.140 Determination by city for renewal of franchise.~~

~~The process specified in ACC 20.06.030 for determining and notifying of completeness of application shall be used for renewals. Within 120 calendar days after receiving a complete application for renewal, following the procedures in ACC 20.06.030, the city council shall grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. Prior to granting or denying renewal of a franchise under this chapter, in whole or in part, the city council shall conduct a public hearing and make a decision based upon the criteria set forth below in addition to all criteria in ACC 20.06.040.~~

~~A. The continuing capacity of the public ways to accommodate the applicant's existing facilities.~~

~~B. The applicant's compliance with the requirements of this title and the franchise agreement.~~

~~C. Applicable federal, state and local utility and telecommunications laws, rules and policies.~~

~~D. Such other factors as may demonstrate that the continued franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.150 Obligation to cure as a condition of renewal.~~

~~No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this title, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.160 Reserved.~~

~~(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.170 Other city costs.~~

~~All franchisees shall, within 30 days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement. In addition, all franchisees shall, within 30 days after written demand, reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the franchisee's utility or telecommunications facilities. Finally, all franchisees shall, within 30 days after written demand, reimburse the city for the franchisee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering any city facility as a result of the presence in the public way of the franchisee's utility or telecommunications facilities. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.06.180 Compensation for use of public ways.~~

~~A. The city finds that the public ways to be used by commercial utilities and carriers and operators in the operation of telecommunications systems within the boundaries of the franchise are valuable public properties, acquired and maintained by the city at~~

great expense to its taxpayers, and that the grant of use of said public ways is a valuable property right, without which grantees and franchisees would be required to invest substantial capital in public way costs and acquisitions; therefore, grantees and franchisees shall pay the city as a general compensation for the use of the public way during each year of the term of a franchise a franchise fee as determined by city council, not to exceed six percent of gross revenues for each quarter of each calendar year. Franchisees shall pay the franchise fee mandated by this chapter but the city acknowledges and understands that such amount (and any other fees, assessments, or taxes imposed on franchisees not described in subsection E of this section) shall appear as a line item on the bill sent to, and shall be collected from, the subscribers; provided further, that the compensation required from any telecommunications operator or carrier engaged in the "telephone business," as defined in RCW 82.04.065, shall be consistent with RCW 35.21.860.

B. *Annual Franchise Fee Adjustments.* The initial annual franchise fee percentage shall be the amount permitted by law of gross revenues unless and until it is further adjusted by city council. Any such adjustment shall occur at least 60 days before any subsequent annual anniversary date. Any adjustment shall become effective on the subsequent annual anniversary date.

C. *Quarterly Payment.* Franchisees shall forward by check wire transfer an amount equal to this quarterly payment by the fifteenth day of the second calendar month immediately following the close of the calendar quarter for which the payment is calculated.

D. *Late Payment.* In the event any quarterly payment is made after noon on the date 10 days after the date due, franchisees shall pay a late payment penalty as shown in the city's fee schedule.

E. *Fees and Compensation Not a Tax.* The fees, charges and fines provided for in this title and any compensation charged and paid for the franchisee's use of the city's public ways, whether "fiduciary or in kind," are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a

~~commercial utility, telecommunications carrier, operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of utility or telecommunications services.~~

~~F. *Ruling of Unenforceability.* The compensation required from any commercial utility, telecommunications carrier, operator, or provider shall be as provided by law. In the event any franchise fee shall be held unenforceable by a court of law which has jurisdiction over the city, franchisees shall pay the equivalent amount paid in franchise fees as a city utility tax which shall be applied retroactively to time periods during which the franchise fee was determined to be unenforceable.~~

~~G. *Quarterly Report.* In order to properly determine the gross revenues received by franchisees, the franchisee shall, on the same date that each quarterly payment is made, file with the director of finance a sworn copy of a report, in a form acceptable to the city, in sufficient detail to itemize revenues from each of the revenue categories. The city may, if it sees fit and at its own expense, have the books and records of franchisees examined by a representative of said city to ascertain the correctness of the reports agreed to be filed herein. Neither the acceptance of any payment nor any subsequent review shall be deemed an agreement by the city that the correct payment was paid, absent a fully authorized written release by the city on any such payments or on such reports. Any necessary prorations shall be made in the first and last year of each term of the franchise. Any city request for access to books and records shall be allowed by the franchisee at reasonable times and for reasonable purposes. Such information shall be held in strict confidence by the city as allowed by law and used only for the purpose stated herein.~~

~~H. *Recalculation at End of Compensation Year.* At the end of each calendar year, franchisees shall recalculate the total general compensation actually due. If additional amounts are due the city by franchisee, said amounts shall be paid by the fifteenth day of February following the calendar year during which such amounts were originally due. If amounts are found to be due the franchisees by the city, said amounts shall be credited by the fifteenth day of February during which such amounts were originally due. Any necessary prorations will be made.~~

I. *Taxes Are Not to Be a Credit.* The compensation paid under this franchise shall be exclusive of and in addition to all special assessments and taxes of whatever nature which are applicable to all other persons or entities doing business within the city, including, but not limited to, ad valorem tax, sales tax, corporate or business occupation taxes or other taxes or fees imposed or levied by any governmental entity.

J. *Utility Tax Liability – Franchise Fees.* Revenues derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by law, and in no event may the combined utility tax and franchise fee exceed six percent of gross revenues in accordance with RCW 35.21.870. Franchise fees, if applicable, shall be levied on a nondiscriminatory basis.

K. *Rights of City.* Payment of money under any franchise shall not in any way limit or inhibit any of the privileges or rights of the city, except insofar as city's privileges or rights are expressly limited or inhibited by the terms of a franchise.

L. *Annual Report.* Franchisees shall file annually with the director of finance, no later than 90 days after the end of franchisee's fiscal year, an unaudited statement of revenues (for that fiscal year just ended) attributable to the operations of the franchisee's telecommunications system within the city pursuant to the franchise agreement. The statement shall present a detailed breakdown of gross revenues and uncollectible accounts for the year. The city may, if it sees fit, have such report audited by an independent certified public accountant of its choosing. If the audit reveals an underpayment error in payment by franchisees of more than five percent, then franchisees shall pay for the costs of the audit. If the audit reveals an error in payment of five percent or less, the city shall pay the costs of the audit. The report will summarize those accounts reconciled to be within the franchise area by the city's quarterly review.

M. *Circumventing Payments.* Any transaction(s) which have the effect of circumventing payment of the required franchise fees and/or evasion of payment of franchise fees or any payments due the city under a franchise by noncollection or nonreporting of gross revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by franchisees are prohibited.

N. *Best Rates.* As allowed by applicable law, part of the compensation to the city for the grant of any telecommunications franchise, the city shall be entitled to obtain subscriptions, at the city's discretion, to the communications service at franchisee's lowest comparable rate applicable to any government body or municipality of the state of Washington. In addition, city shall be entitled to franchisee's lowest comparable rate applicable to any governmental body or municipality of the state of Washington for purchase and/or lease, should the city determine to purchase and/or lease equipment or modems applicable to government bodies or municipalities in the state of Washington for purposes of accessing the communications service. (Ord. 6718 § 3 (Exh. C), 2019; Ord. 6546 § 8, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.190 Accounts, books and records.

The franchisee shall keep the city fully informed as to accounting methods and procedures in connection with the recording and reporting by the franchisee of all revenues and uncollectibles.

A. *City to Be Informed.* Franchisees shall keep the city fully informed as to all matters in connection with or which may affect the construction, reconstruction, removal, maintenance, operation and repair of franchisee's system located in public way(s), franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by franchisees of all revenues and uncollectibles. Franchisees shall comply with the city's determination regarding forms for reports, the time for reports, the frequency with which any reports are to be made, and whether reports are to be made under oath. The city acknowledges that a franchisee

may be a reporting company under the Securities Exchange Act of 1934 and that shares of its stock are publicly traded. As such, a franchisee may be precluded from disclosing certain sensitive, nonpublic information by virtue of rules and regulations promulgated under such act or otherwise.

B. *Accounts.* The franchisee shall keep complete and accurate books of account and records of its business and operations subject to this franchise chapter in accordance with generally accepted accounting principles or in accordance with accounting rules prescribed by applicable federal or state regulatory agencies. The city may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles. All subscribers who report a service address in the city of Auburn shall be subject to taxes and fees under this franchise. When required by the city, the franchisee shall make available a complete list of all service addresses within the city of Auburn. This list shall be available for review by the city at a local franchisee's business office. The list will be provided on a computer disc in ASCII format sorted by zip code. It is understood this data is only needed for Auburn to perform an audit to ascertain that the correct subscribers are subjected to Auburn taxes and fees. As the city annexes new areas, those zip codes, if any, will be added.

C. *Access to Records.* The franchisee shall provide the city with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of the franchisee pertaining to this franchise chapter. The franchisee shall fully cooperate in making available its records and otherwise assisting in these activities. Such information shall be held in strict confidence by the city, as allowed by law, and used only for the purpose stated herein.

D. *Inquiries to Franchisee.* The city may, at any time, make inquiries pertaining to the franchisee's operation of its utility or telecommunications system within the franchise area. The franchisee shall respond to such inquiries on a timely basis. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~13.36.010~~20.06.010 Purpose.

The purpose of this chapter is to set forth an integrated statement of conditions, requirements, obligations, duties and procedures for granting by the city of a nonexclusive franchise for the construction, maintenance and operation of ~~a~~ cable system~~s of cable television signal distribution within~~ the territorial limits of the ~~c~~City of Auburn. (Ord. 4625 § 2, 1993.)

~~13.36.030~~20.06.020 Cable Franchise – Conditions and term.

A. *Authority to Grant Cable Franchises ~~or Licenses for Cable Television~~.* The city council may by ~~resolution~~ordinance award a nonexclusive franchise to construct, operate and maintain a cable ~~communications~~ system which complies with the requirements and conditions of this chapter. Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits, or preclude the city from using any roads, ~~rights-of-~~public ways, streets, or other public properties, or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new ~~rights-of-~~public ways and thoroughfares and other public properties; provided, that any such changes shall not materially or substantially impair the rights granted a franchisee pursuant to this chapter. All franchises granted subsequent to the effective date of this chapter shall be consistent with the requirements and conditions of this chapter.

~~B. *Incorporation by Reference*. The provisions of this chapter shall be incorporated by reference in any franchises approved pursuant hereto. The provisions of any proposal for a franchise submitted and accepted by the city shall be incorporated by reference in the applicable franchise; provided, that in the event of any conflict between the proposal, this chapter and the franchise, the franchise shall be the prevailing document.~~

~~C~~B. *Conditions of a Franchise.* Subject to the provisions in this chapter, any cable franchise granted hereunder by the city shall authorize a franchisee to: (1) engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the city; and (2) erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system; ~~and (3) use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the city;~~ provided, that no privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

~~D~~C. *Term of Franchise.* The council shall have the right to grant a franchise for a period of time which in the council's judgement is the most appropriate to the circumstances of the particular grant and is in the best interests of the citizens of the city. (Ord. 4625 § 2, 1993.)

~~13.36.040~~20.06.030 ~~Franchise – Application requirements~~Cable franchise application.

An applicant for an initial franchise to construct, operate, and maintain a cable communication system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable franchise application fee in the amount set forth in the city of Auburn fee schedule. The application shall include the following: (Ord. 6546 § 1, 2014; Ord. 4625 § 2, 1993.)

A. The identity of the applicant, including all affiliates of the applicant that may be involved in the construction, operation and/or maintenance of the cable system;

B. A description of the cable services that are or will be offered or provided by the applicant;

C. A description of the facilities, transmission medium or transporting means that will be used by the applicant to offer or provide such cable services;

E. Evidence of ownership or a right to use existing facilities such as poles, ducts, conduit or other facilities which the applicant intends to use or lease.

F. Information to establish that the applicant has obtained any other required governmental approvals and permits to construct and operate the facilities, and to offer or provide cable services.

H. The area or areas of the city the applicant desires to serve and a schedule for build-out to the entire franchise area;

I. Such other and further information as permitted by applicable law as may be requested by the city;

J. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet financial security requirements in ACC 20.02.280;

K. A copy of an Auburn business license stamped and signed by the business license clerk, as designated by the mayor; and

L. A nonrefundable application fee and other charges as set forth in the Auburn fee schedule.

20.06.040 Scheduling public hearing; notice; criteria for approval.

A. Notice of Complete Application. Within 30 calendar days after receipt of the franchise application, the city will complete review of the application to determine whether the application required by ACC 20.06.030 is complete and can proceed

with processing. If during the 30-calendar-day review period, the public works director or designee determines that the application is incomplete, the city will issue a letter to the applicant specifying the additional information necessary to complete the application. The applicant will be given 30 calendar days to respond. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided. If the applicant needs additional time to respond the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. Franchise Negotiations. When satisfied that the application is complete, the city will notify the applicant in writing that the application is complete. At such time cable franchise negotiations may commence. At a minimum, a cable franchise must provide that access to cable service will not be denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides; that the public will be benefited by the granting of a franchise to the applicant; that the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area; and that the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support.

C. After completion of negotiations, the city will notify the applicant in writing of the schedule for consideration by the city council in accordance with RCW 35.99.030. The city council will schedule a public hearing to consider the proposed cable franchise, and the city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 6532 § 33, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.050 Determination by the city.

Within 120 calendar days from the time of notification that the application is complete or as otherwise permitted by RCW 35.99.030, under ACC 20.06.040, the city shall issue a written determination granting or denying the application for a cable franchise in whole or in part, Prior to granting or denying a franchise under this title, the city council shall conduct a public hearing and make a determination base on the criteria set forth in federal law.

20.06.060 Application instruction and requirements for competitive cable franchises.

A. Non-CFAR franchise applications. Notwithstanding any other provisions, any competitive cable services franchise applicant may elect to submit a cable franchise application to the City and/or engage in cable franchise negotiations without regard to the application of the FCC's Competitive Franchise Application Rule (CFAR) - the administrative rule that imposes procedures upon local governments for the issuance of competitive cable franchises for areas currently served by an existing cable operator. In such cases, the City will negotiate the terms of a competitive cable franchise without regard to 47 CFR §76.41 and the other provisions of this Section. Agreement by any applicant to negotiate a franchise without regard to 47 CFR §76.41 and the other provisions of this Section shall not be deemed by the City to effect a waiver of any applicant's right under applicable law to trigger application of 47 CFR §76.41 and this Section, where applicable.

B. Instructions and definitions.

1. An applicant for a competitive cable franchise ("Applicant") shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 CFR §76.41 and applicable state and local laws and the application fee in the amount set forth in the city of Auburn fee schedule.

2. The City shall accept and review only those applications that include complete responses to every requirement of Subsections B, C, D and E of ACC 20.06.060. Submission of an application that does not include the requisite information set forth in Sections B, C, D and E, and the application fee shall not commence the time period for granting or denying the application set forth in 47 C.F.R. §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City's review of the application.

3. Application shall be made to the Department of Public Works.

4. Upon request, the City will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Washington public records act.

5. For the purposes of the application, the terms, phrases, and their derivations set forth below shall have the meanings given unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

a. "Affiliate(s)" when used in relation to any person, means any other person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

b. "Applicant" means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.

c "Control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

d. "Interest" includes officers, directors and shareholders owning five percent (5%) or more of the Applicant's outstanding stock or any equivalent voting interest of a partnership or joint venture.

e "Parent Corporation" includes any entity with ownership or control of the Applicant.

f "Principal" includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Applicant.

g. "Regulatory Authority" includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations.

C. Requisite information:

1. Identification and Ownership Information. The application shall include the name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from Applicant), and the name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the franchise(s) requested, including the Applicant's primary contact and any additional authorized contacts.

2. Business structure.

a. If a corporation, the Applicant shall provide: 1) A list all officers and members of the Board of Directors, their principal affiliations and their addresses; 2) A certificate of good standing indicating that the Applicant is licensed to do business in the State of Washington; and 3) A statement

indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and respond to this subsection concerning the controlling corporation.

b. If a partnership, the Applicant shall describe the structure of the partnership and the interests of general and limited partners; and state whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and respond to subsection 2.a above, as applicable, concerning the controlling entity.

3. Experience.

a. Current Franchises. An Applicant shall list all cable systems in which it or any Affiliate owns more than five percent of the system; provided that if the total number of cable systems exceeds ten, the Applicant shall list the ten systems that are the subject to its most recent cable franchises. For each system Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of the most recent available date (indicate date).

b. Potential Franchises. An Applicant shall list communities where it or any Affiliate currently has in the State of Washington a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. The Applicant shall include the name of communities, date of application, and date of expected action.

4. Management Structure. Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant.

D. Legal qualification.

1. Franchise Violations. An Applicant shall state whether it or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

2. Other Violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any other type (e.g. utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

E. E. Financial qualifications. Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation. Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

F. Technical qualifications, planned services and operations.

1. The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed dates for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area, and if so, a proposed timetable for meeting that goal;

2. If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas, the Applicant shall state the

basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;

3. The Applicant shall describe with particularity its planned residential Cable services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or service;

4. The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer cable services in the proposed locations;

5. The Applicant shall describe with particularity its planned non-residential cable services;

6. The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy; and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;

7. The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities;

8. The Applicant shall describe its plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of the City's local cable customer service standards.

G. Certification of applicant. Each application shall be accompanied by a certificate in a form required by the City, and declaring that the Applicant's representations are truthful

H. Public records/confidentiality. Unless otherwise provided by applicable law, information submitted as part of an application is open to public inspection and subject to the Washington Public Records Act.

I. Application fee. An application fee sufficient to cover the reasonable cost of processing applications under this ordinance will be in the amount set forth in the city of Auburn fee schedule.

J Review Process

1. Acceptance of Application. The City shall review the application to ensure all requisite information is included in the application. If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application and notifying the Applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received. If the application is complete, the City will notify the Applicant in writing that all requisite information has been received.

2. Staff Review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

3. Franchise Negotiations. Within the ninety (90) day time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise

agreement with the applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Subsection K.

K. Public hearing. The City shall hold a public hearing before acting on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

L. Review criteria. The City may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

1. The Applicant does not have the financial, technical, or legal qualifications to provide cable service;

2. The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

3. The Applicant's proposed terms do not comply with applicable laws and regulations including, but not limited to, local customer service standards, or relevant existing contractual obligations of the City.

~~13.36.060~~20.06.070 Acceptance.

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ~~resolution~~ ordinance granting same has become effective and the ~~grantee~~franchisee has accepted same as provided below.

B. Within ~~60~~30 days after the effective date of the ~~resolution~~ordinance awarding a franchise, or within such extended ~~-~~period of time as the council in its discretion may authorize, a franchisee shall file with the city clerk its written acceptance of the franchise, in a form satisfactory to the city attorney, together with the ~~bond~~financial security, ~~and~~ insurance policies, and any outstanding fees required by ACC ~~13.36.370 and 13.36.380~~20.02.270 and 20.02.280. (Ord. 4625 § 2, 1993.)

~~13.36.080~~20.06.080 Rules and regulations by the city.

In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to the city by ~~the Act~~applicable law, and those powers expressly reserved by the city or agreed to and provided for in a franchise, the city also reserves the right and power to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers. (Ord. 4625 § 2, 1993.)

~~13.36.090~~20.06.090 Technical standards and maintenance.

A. Subject to ~~federal, state and local~~applicable law, a franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended hereafter, and, at the minimum, the following:

1. Applicable city, county, state and national/federal codes, laws and regulations;

2. Applicable utility joint attachment practices;

3. The National Electric Safety Code; ANSI C2;

4. Local utility code requirements;

5. Local ~~rights-of-~~public way procedures, in accordance with ~~ACC~~ Titles 12, 13 and 20 ACC.

~~B. A comprehensive routine preventive maintenance program shall be developed, effected and maintained to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part 76 and amendments thereto.~~ (Ord. 6238 § 3, 2009; Ord. 4625 § 2, 1993.)

~~13.36.110~~20.06.100 Construction standards.

All facilities constructed pursuant to the provisions of this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable sections of the National Electrical Code, codes of the state of Washington and ~~ACC~~ Titles 12, 13 and 20 ACC pertaining to such construction. (Ord. 6238 § 4, 2009; Ord. 4625 § 2, 1993.)

~~13.36.130~~20.06.110 Undergrounding ~~and landscaping~~.

Undergrounding of all ~~utility~~cable facilities will meet the requirements of Chapter 13.32A ACC. (Ord. 6238 § 5, 2009; Ord. 4625 § 2, 1993.)

~~13.36.140~~20.06.120 Construction in ~~right-of-~~the public way.

Whenever, in the sole opinion of the city, any of a franchisee's facilities or equipment need to be relocated or altered due to a construction or repair project by the city in a public way, a franchisee shall move or relocate said facilities or equipment within 30 days from receiving written notice from the city. However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within 24 hours. Any relocation or alteration of a franchisee's facilities or equipment required under this section shall be at the sole expense of a franchisee. Installation and/or relocation of all underground and aerial facilities within existing city right-of-way or public ways or city utility easements shall

be permitted under Chapter 12.24 ACC, Construction Permits. (Ord. 5043 § 1 (Exh. B), 1998; Ord. 4625 § 2, 1993.)

~~13.36.150~~20.06.130 Safety requirements.

A franchisee, in accordance with applicable national, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

The city reserves the general right to see that the system of a franchisee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the city, the city will, after discussions with a franchisee, establish a reasonable time for a franchisee to make necessary repairs. If the repairs are not made within the established time frame, the city may make the repairs itself or have them made and collect all ~~reasonable~~ costs thereof from the franchisee. (Ord. 4625 § 2, 1993.)

~~13.36.180~~20.06.140 Rates.

Within 60 days after the grant of any franchise hereunder, a franchisee shall file with the city a complete schedule of all rates to be charged to all subscribers.

Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, the franchisee shall provide the city and all subscribers a minimum of 30 days prior written notice of such change.

Subject to ~~federal, state and local~~applicable law, the city may regulate the approval of increases of rates or charges for providing cable service and prescribe reasonable rate approval procedures. (Ord. 4625 § 2, 1993.)

~~13.36.200~~20.06.150 Customer service.

A. A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A log of all service interruptions shall be maintained for at least a period of one year. The city, after two working days' notice, may inspect such logs.

B. An employee of a franchisee shall answer and respond to all individual complaints received no later than 5:00 p.m. weekdays. A franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays, weekends and holidays and will respond to any system outage affecting more than five subscribers. A copy of the instructions to the answering service by a franchisee shall be furnished to the city or its designee.

C. A technician shall be on call seven days a week, 24 hours a day. A franchisee shall respond immediately to service complaints in an efficient manner.

D. A franchisee shall maintain a sufficient repair force to respond to individual requests for repair service within two working days after receipt of the complaint or request, except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable. If a subscriber has notified a franchisee of an outage, no charge for the period of the outage shall be made to the subscriber if the subscriber was without service for a period exceeding 24 hours, unless the outage was due to acts of God, force majeure or circumstances reasonably beyond a franchisee's ability to control.

E. A franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address, and telephone number of the city official or designee, to whom system subscribers may direct their concerns.

FE. In no case will a franchisee's service standards fall below the standards established by the National Cable Television Association (NCTA) which are attached to the ordinance codified in this chapter as Appendix "A" and incorporated within this chapter[1] or any FCC regulationRegardless of any franchise provisions, the city retains the right to adopt any customer service standards to govern the provision of cable services within the city as may be permitted by applicable law. (Ord. 4625 § 2, 1993.)

1 Code reviser's note: Appendix "A" is on file in the office of the city clerk.

13.36.21020.06.160 Telephone response.

A. A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the city.

B. In order that the city may be informed of a franchisee's success in achieving satisfactory customer relations in its telephone answering functions, a franchisee shall, upon request by the city, and routinely no less than quarterly, provide the city with a summary that will provide, at a minimum, the following:

1. Total number of calls received in reporting periods;

2. Time taken to answer;

3. Average talk time;

~~4. Number of calls abandoned by the caller;~~

~~5. Average hold time;~~

~~6. Percentage of time all lines busy;~~

~~7. An explanation of any abnormalities.~~

~~This data will be compared to minimum standards of the NCTA incorporated in this chapter by reference or any amendment thereto which increases such NCTA standards, and shall be monitored by the city.~~

~~C~~B. Calls for service generated during period of system outages due to emergency which affects more than 25 customers may be excluded from the service response calculations. The city shall have the sole determination as to what constitutes a system failure due to emergency and which calls shall be excluded from the service level calculations. (Ord. 4625 § 2, 1993.)

~~13.36.220~~20.06.170 Failure to improve customer service.

A. The city or its designee shall review telephone response and customer service information with a franchisee. The franchisee shall make improvements in the appropriate categories which were found deficient pursuant to ACC ~~13.36.190 and 13.36.200~~20.06.150 from the last reporting period. Failure to do so may result in the calling of a public hearing by the council for the purpose of examining the reasons, if any, why such improvements were not achieved by a franchisee.

B. An unsatisfactory record will result in the hearings being made part of an exhibit under Sections 626(c)(1)(A) and (B) of the Cable Act alleging that such practices have failed to conform with future refranchising requirements as stated therein. In addition, a franchisee's corporate office shall be advised of the city's findings. (Ord. 4625 § 2, 1993.)

~~13.36.230~~20.06.180 Franchise fee.

A franchisee shall pay to the city quarterly, on or before the thirtieth day of each January, April, July and October, a sum as set forth in the Auburn fee schedule. Such remittances shall be accompanied by forms furnished by the city to report detailed information as to the sources of such income. (Ord. 6546 § 2, 2014; Ord. 4625 § 2, 1993.)

~~13.36.260~~20.06.190 Record inspection.

Subject to statutory and constitutional limits and two working days' advance notice, the city reserves the right to inspect the records of a franchisee necessary for the enforcement of a franchise and verification of the accuracy of franchise fee payments at any time during normal business hours; provided, that the city shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of a franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Communications Act, ~~and~~ plans pertaining to a franchisee's operation in the city, and any information reasonably necessary for the city to evaluate compliance with franchise obligations. (Ord. 4625 § 2, 1993.)

~~13.36.270~~20.06.200 Reports.

A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:

A. Most recent annual report;

B. A copy of the 10-K Report, if required by the Securities and Exchange Commission;

C. The number of homes passed;

D. The number of subscribers with basic services;

E. The number of subscribers with premium services;

F. The number of hook-ups in period;

G. The number of disconnects in period;

H. Total number of miles of cable in city;

I. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution;

J. A statement of its current billing practices, and a sample copy of the bill format;

K. A current copy of its subscriber service contract;

L. Report on operations; and

M. Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate. (Ord. 4625 § 2, 1993.)

~~13.36.280~~20.06.210 Programming.

For informational purposes, a franchisee shall file a listing of its programing and the tiers in which they are placed. ~~A franchisee shall consider the city's suggestions of general program categories as determined from time to time in residential questionnaire polls. The results of initial such surveys will be appended to the respective franchise agreements.~~ (Ord. 4625 § 2, 1993.)

~~13.36.290~~20.06.220 Nondiscrimination.

A. A franchisee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this

chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and, provided further, that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee.

B. A franchisee will not deny access to cable ~~communications~~ service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 4625 § 2, 1993.)

~~13.36.410~~20.06.230 Inconsistency.

If any portion of chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other ~~federal~~applicable law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other ~~federal~~applicable law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this chapter shall not be affected thereby. (Ord. 4625 § 2, 1993.)

~~13.36.420~~20.06.240 Severability.

Each section, subsection or other portion of chapter shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder. (Ord. 4625 § 2, 1993.)

Chapter 20.08
FACILITIES LEASE

Sections:

20.08.010 Facilities lease.
20.08.020 Lease application.
20.08.030 Notice of complete application and scheduling of public hearing.
20.08.040 Determination by the city.
20.08.050 Notification of council action and execution of lease.
20.08.060 ~~Nonexclusive lease~~Extent of leasehold interest granted.
20.08.070 Term of facilities lease.
20.08.080 Rights granted.
20.08.090 Interference with other users.
20.08.100 Ownership and removal of improvements.
20.08.110 Cancellation of lease by lessee.
20.08.120 ~~Compensation to the city~~Compliance with zoning standards.
20.08.130 ~~Amendment of facilities lease~~Repealed.
20.08.140 ~~Renewal of facilities lease~~Repealed.
20.08.150 ~~Determination by the city for renewal of facility lease~~Repealed.
20.08.160 ~~Obligation to cure as a condition of renewal~~Repealed.

20.08.010 Facilities lease.

The city council may, in its sole discretion, which is hereby reserved, approve facilities leases for the location of ~~commercial~~ utility or telecommunications facilities ~~and other nontelecommunications facilities~~ upon city real property~~, as that term is defined in this title~~. Neither this chapter, nor any other provision of this title shall be construed to create an entitlement or vested right in any person or entity of any type to the use of any city property or city facility. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.020 Lease application.

Any person that desires to solicit the city's approval of a facilities lease pursuant to this title shall file a lease proposal with the city which, in addition to the information required by ACC ~~20.06.020~~20.04.020 and ACC 20.06.030, shall include the following:

A. A description of the facilities or other equipment proposed to be located upon city property;

B. A description of the city property upon which the applicant proposes to locate facilities or other equipment;

C. Preliminary plans and specifications in sufficient detail to identify:

1. The location(s) of existing utilities or telecommunications facilities or other equipment upon the city property, whether publicly or privately owned;

2. The location and source of electric and other utilities required for the installation and/or operation of the proposed facilities or equipment;

D. Accurate scale conceptual drawings and diagrams of sufficient specificity to analyze the aesthetic impacts of the proposed telecommunications facilities or other equipment;

E. If applicant is proposing to install aboveground and/or overhead facilities:

1. Evidence that surplus space is available for locating its utilities or telecommunications facilities on existing utility poles along the proposed route;

2. Proof of compliance with city's zoning code;

F. Whether the applicant intends to provide cable service, ~~video dialtone service~~ or other multi-channel video programming service, and sufficient information to determine whether such service is subject to cable franchising;

G. An accurate map showing the location of any existing utility or telecommunications facilities in the city that applicant intends to use or lease;

H. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational, and governmental institutions;

I. A copy of an Auburn business license stamped and signed by the business license clerk, as designated by the mayor;

J. Proof of ability to meet city's bonding requirements in Chapter 12.24 ACC when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed; and ~~proof of ability to meet the city's security requirements in ACC 20.10.240 through 20.10.260;~~

K. A nonrefundable application fee in the amount established in the city's fee schedule, if applicable; and

L. Such other and further information as may be requested by the city. (Ord. 6718 § 4 (Exh. D), 2019; Ord. 5897 § 24, 2005; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.030 Notice of complete application and scheduling of public hearing.

A. Within 30 calendar days the city will complete an initial review of the application to determine whether the application contains sufficient information as outlined in ACC 20.08.020 to proceed with processing. Once satisfied that the proposal is clear, and if the city in its sole discretion determines that it is in the city's interests to negotiate a lease, the ~~mayor will appoint a negotiation team to meet with the applicant and~~ director or designee responsible for the property will determine whether additional information is needed. ~~The team shall as a minimum consist of the finance director, a legal representative, and the department director affiliated with the property being considered for lease.~~ If during the 30-calendar-day review period, the application is deemed incomplete, the city will issue a letter to the applicant specifying the additional information necessary in order to proceed with processing.

The applicant will be given 30 calendar days to respond. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee, if applicable.

B. When satisfied that the application is complete, the ~~finance~~ director or designee responsible for the property will issue a letter of completeness and notifying the applicant of the process for consideration of the matter by the city council. Once an acceptable draft lease agreement has been prepared, the city clerk will schedule a hearing before the city council, if applicable, and the city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 6532 § 34, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.040 Determination by the city.

Recognizing that the city is under no obligation to approve a facilities lease for the use of city property, the city shall attempt to consider and take action on applications for facilities leases within 180 days from the time of reaching a determination of completeness, under ACC 20.08.030. When such action is taken, the ~~city~~ director or designee responsible for the property shall issue a written determination granting or denying the lease in whole or in part. If the lease is denied, in whole or in part, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for a facilities lease shall be based upon, but not be limited to, the following criteria:

A. The capacity of the city property ~~and public ways~~ to accommodate the applicant's proposed facilities.

B. The capacity of the city property ~~and public ways~~ to accommodate additional utility and telecommunications facilities if the lease is granted.

C. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the lease is granted.

D. The public interest in minimizing the cost and disruption of construction upon city property ~~and within the public ways~~.

E. The service and public benefit that applicant will provide to the community and region.

F. The effect, if any, on public health, safety, and welfare if the lease requested is approved.

~~G. The availability of alternate routes and/or locations for the proposed facilities.~~

~~H~~G. Whether the applicant is in compliance with applicable federal and state telecommunications laws, regulations and policies, including, but not limited to, the registration requirements administered by the Washington Utilities and Transportation Commission.

~~I.~~H The potential for radio frequency and other interference with existing public and private telecommunications or other facilities located upon the city property.

~~J~~I. The potential for radio frequency and other interference or impacts upon residential, commercial, and other uses located within the vicinity of the city property.

~~K~~J. Whether the city's property zoning supports the proposed land use.

~~L~~L. Demonstrated ability and commitment to meet city bonding requirements in Chapter 12.24 ACC~~and security requirements established in ACC 20.10.240 through 20.10.260~~.

M. Such other factors as may demonstrate that the lease to use the city property ~~will~~ does not serve the community interest.

N. Other criteria determined to be necessary or appropriate to the public health, safety, or welfare of the community. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.050 Notification of council action and execution of lease.

Upon the city council's decision, the ~~finance~~ director or designee responsible for the property shall notify the applicant of the decision and instruct the applicant of the procedure to follow to complete execution of the lease agreement if approved by the city council. No facilities lease shall be deemed to have been granted hereunder until after any scheduled public hearing, if applicable, and city council approval of a written agreement setting forth the particular terms and provisions under which the lessee has been granted the right to occupy and use the city property specified in the lease and both the city and applicant have fully executed the lease and the applicant has provided the security deposits and proof of insurance as required by Chapter ~~20.10~~20.02 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.060 ~~Nonexclusive lease~~Extent of leasehold interest granted.

~~No facilities~~Any lease granted under this title shall be limited to the leasehold interest described in the lease document, and shall not confer any ~~exclusive~~ other right, privilege, license, or franchise to occupy or use city property for ~~delivery of utility or telecommunications services or~~ any ~~other~~ purposes not described therein. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.070 Term of facilities lease.

~~By virtue of the uncertainties created by the Act, except as provided in any pre-existing lease agreements, t~~The length of a facilities lease granted hereunder shall be set forth in the lease agreement~~, subject to renewal as provided in this chapter~~. (Ord. 6521 § 1, 2014; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.080 Rights granted.

No facilities lease granted under this chapter shall convey any right, title or interest, of any kind, in the city property, but shall be deemed a ~~license~~ grant only to use and occupy the city property for the limited purposes and term stated in the lease agreement. Further, no facilities lease shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.090 Interference with other users.

No facilities lease shall be granted under this title unless it contains a provision which is substantially similar to the following:

> The City has previously entered or may enter into leases with other tenants for ~~their equipment and~~installation and operation of utility and telecommunications facilities. ~~Lessee acknowledges that the City is also leasing the City property for the purposes of transmitting and receiving telecommunications signals from the City property.~~ The City, however, is not in any way responsible or liable for any interference with Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and the Lessee cannot work out this interference with the other tenants, the Lessee may, upon 30 days' notice to the City, terminate this Lease and restore the City property to its original condition, reasonable wear and tear ~~excepted~~accepted. The Lessee shall cooperate with all other tenants to identify the causes of, and work towards the resolution of, any electronic interference problem. In addition, the Lessee agrees to eliminate any ~~radio or television~~ interference caused to City-owned or other public/private facilities or surrounding property owners, residents, or tenants at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from

City operated telecommunications or other facilities located upon the City property subject to this Lease.

(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.100 Ownership and removal of improvements.

No facilities lease shall be granted under this title unless it contains a provision which states that all buildings, landscaping, and all other improvements, except lessee's equipment, shall become the property of the city upon expiration or termination of the lease. In the event that the city requires removal of such improvements, such removal shall be accomplished at the sole expense of the lessee and completed with full restoration of the site to the original condition or its practical equivalent as determined by the city, within 90 days after receiving written notice from the city requiring removal of the improvements. ~~Further, in~~In the event that utility~~,~~ ~~or~~ telecommunications facilities or other equipment are left upon city property after expiration or termination of the lease, at the city's option, the utility, telecommunications facilities or other such equipment ~~they~~ shall become the property of the city if not removed by the lessee after 30 days' written notice from the city. However, the city does reserve the right to cause the removal of the facilities and equipment and restoration of the site for which lessee shall reimburse the city all costs of such removal and restoration plus ten percent of the cost to cure for administrative purposes within 30 days of written demand. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.110 Cancellation of lease by lessee.

A. All facilities leases are contingent upon the prospective lessee obtaining all necessary permits, approvals, and licenses for the proposed facilities. In the event that the prospective lessee is unable to obtain all such permits, approvals, and

licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days' prior written notice to the city.

~~B. In the event that the holder of a facilities lease determines that the city property is unsuitable for its intended purpose, the lessee shall have the right to cancel the lease upon 120 days' written notice to the city. However, no prepaid rent shall be refundable.~~ (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.430~~20.08.120 Compliance with zoning standards.

All uses proposed in applications for leases~~, franchises, and public way agreements~~ under this title will comply with the city zoning regulations and siting standards in ~~ACC~~ Title 18 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.08.120 Compensation to the city.~~

~~Each facilities lease granted under this title is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the rights granted to a lessee; provided, nothing in this title shall prohibit the city and a lessee from agreeing to the compensation to be paid. Such compensation shall be payable in advance of the effective date of the lease and on or before January 31st of each calendar year. Any payments received after the due date shall include a late payment penalty of two percent of the annual rental fee for each day or part thereof past the due date. If any or all of the rental fee is more than 60 calendar days delinquent, the lease will automatically terminate on the sixty-first calendar day of delinquency, and the city may proceed to collect against any security provided by the lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

20.08.130 ~~Amendment of facilities lease~~Repealed.

~~Except as provided within an existing lease agreement, a new lease application and lease agreement shall be required of any lessee that desires to expand, modify, or relocate its facilities or other equipment located upon city property. If the lessee is required by the city to locate or relocate its facilities or other equipment on the city property, the city shall grant a lease amendment without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

20.08.140 ~~Renewal of facilities lease~~Repealed.

~~A lessee that desires to renew its facilities lease in effect under this chapter shall, not more than 120 days nor less than 90 days before expiration of the facilities lease then in effect, file an application, which is determined as complete in accordance with ACC 20.08.030, with the city for renewal of its facilities lease which shall include the following:~~

~~A. The information required pursuant to ACC 20.08.020;~~

~~B. Any information required pursuant to the facilities lease agreement between the city and the lessee;~~

~~C. All deposits or charges required pursuant to this chapter;~~

~~D. A nonrefundable application renewal fee in the amount established in the city's fee schedule. (Ord. 6718 § 4 (Exh. D), 2019; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

20.08.150 ~~Determination by the city for renewal of facility lease~~Repealed.

~~All renewals of leases subject to this title shall be renewed in accordance with the provisions of ACC 20.08.030 and 20.08.040. Recognizing that the city council is under no obligation to approve a renewal of a facilities lease for the use of city~~

~~property, the city council shall attempt to consider and take action on applications for renewal of such leases within 90 days after receiving a complete application for such a lease renewal. When such action is taken, the city shall issue a written determination granting or denying the lease renewal, in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for renewal of a facilities lease shall be based upon, but not limited to, the following:~~

~~A. The continuing capacity of the city property to accommodate the applicant's existing facilities.~~

~~B. The applicant's compliance with the requirements of this title and the lease agreement.~~

~~C. Such other factors as may demonstrate that the continued approval to use the city property ways will serve the community interest.~~

~~D. Any criteria contained in ACC 20.08.040. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

20.08.160 ~~Obligation to cure as a condition of renewal~~Repealed.

~~No facilities lease shall be renewed until any ongoing violations or defaults in the lessee's performance of the lease agreement, or of the requirements of this title, have been cured, or a plan, secured by bond or deposit account to the city's satisfaction, detailing the corrective action to be taken by the lessee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

Chapter 20.10

CONDITIONS OF PUBLIC WAY AGREEMENTS, FRANCHISES, AND FACILITIES LEASESREPEALED

Sections:

20.10.010 Purpose.
20.10.020 Acceptance and effective date.
20.10.030 Police power.
20.10.040 Rules and regulations by the city.
20.10.050 Location of facilities.
20.10.060 Compliance with one number locator service.
20.10.070 Construction permits.
20.10.080 Interference with the public ways.
20.10.090 Damage to property.
20.10.100 Notice of work.
20.10.110 Repair and emergency work.
20.10.120 Maintenance of facilities.
20.10.130 Abandonment, relocation or removal of facilities.
20.10.140 Building moving.
20.10.150 Removal of unauthorized facilities.
20.10.160 Emergency removal or relocation of facilities.
20.10.170 Damage to facilities.
20.10.180 Restoration of public ways, other ways, city property and public/private utility property.
20.10.190 Facilities maps.
20.10.200 Duty to provide information.
20.10.210 Leased capacity.
20.10.220 Insurance.
20.10.230 General indemnification.
20.10.240 Performance and construction surety.
20.10.250 Security options.
20.10.260 Performance bond.

20.10.270 Coordination of construction activities.
20.10.280 Assignments or transfers of public way agreements, franchises, or leases.
20.10.290 Transactions affecting control of public way agreements, franchises, or leases.
20.10.300 Revocation or termination of public way agreements, franchises, or leases.
20.10.310 Notice and duty to cure.
20.10.320 Public hearing.
20.10.330 Standards for revocation or lesser sanctions.
20.10.340 Civil penalties.
20.10.350 Enforcement.
20.10.360 Other remedies.
20.10.370 Venue of any court action.
20.10.380 Action by the FCC.
20.10.390 Incorporation by reference.
20.10.400 Notice of entry on private property.
20.10.410 Safety requirements.
20.10.420 Most favored community.
20.10.430 Compliance with zoning standards.
20.10.440 Unfunded mandate.
20.10.450 Care of trees along streets.
20.10.460 Use of utility poles and facilities of others.
20.10.470 Use of poles and facilities by city.
20.10.480 Administration.

20.10.010 Purpose.

The purpose of this chapter is to set forth certain terms and conditions which are common to all public way agreements, franchises, and facilities leases granted under the provisions of this title. Except as otherwise provided in this chapter or in such a

~~public way agreement, franchise, or lease, the provisions of this chapter apply to all such public way agreements, franchises, and leases approved or granted by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.020 Acceptance and effective date.~~

~~No public way agreement, franchise, or lease granted pursuant to the provisions of this title shall become effective unless and until the ordinance or other city action granting the same has become effective. Within 30 days after the effective date of the ordinance or other city action granting a public way agreement, franchise, or lease, or within such extended period of time as the council in its discretion may authorize, the applicant shall file with the city clerk an unconditional written acceptance of the public way agreement, franchise, or lease, in a form satisfactory to the city attorney, together with the bonds, insurance policies, and security fund required by this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.030 Police power.~~

~~In accepting and executing any public way agreement, franchise or lease, the grantee, franchisee, or lessee acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety, health, and welfare of the public, and agrees to comply with all applicable general laws enacted by the city pursuant to such power. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.040 Rules and regulations by the city.~~

~~In addition to the inherent powers of the city to regulate and control any public way agreement, franchise, or lease granted, the authority granted to the city by the Cable Act and the Telecommunications Act of 1996, and those powers expressly reserved~~

by the city, or agreed to and provided for in any public way agreement, franchise, or lease, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of grantees, franchisees, and lessees. Except as provided in this title, the foregoing does not allow for amendment by the city of material terms of any public way agreement, franchise, or lease granted without the written consent of the grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.050 Location of facilities.

All facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a public way agreement, franchise, or lease agreement.

A. Unless otherwise provided in a public way agreement, franchise, or lease, a grantee, franchisee, or lessee with permission to occupy a public way must locate its cable or telecommunications facilities underground in accordance with ACC Title 18 and Chapter 13.32A ACC.

B. Any newcomer in the public way must bear the full cost of discovering the location of any existing conflicts, coordination of the engineering plans to acquire the approvals of parties already in the public way, and relocating and/or mitigating such conflicts with preexisting facilities in conflict with the plans of the newcomer.

C. Whenever the city requires, a grantee, franchisee, or lessee subject to this title, that currently occupies the public way shall relocate its facilities underground at no expense to the city. Such relocation shall be made concurrently with other planned work to minimize the disruption of the public ways as determined by the city engineer.

D. Should the available capacity of public ways prevent new uses in the future, all persons subject to this title shall negotiate with any interested newcomer the means of creating new capacity as required by federal or state law. The parties shall arrive

at a mutually supportable agreement and submit the same to the city for review and comment. The parties will incorporate any reasonable city requirements for approval, and resubmit the revised proposal for city council approval. If approved by the city council, the parties will bear all costs associated with the proposal, and obtain the necessary permits to execute the approved plan from the city in accordance with this title and Chapter 12.24 ACC. The city shall bear no costs associated with resolution of capacity shortages within the public ways. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.060 Compliance with one number locator service.

All grantees, franchisees, and lessees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Number Locator Service. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.070 Construction permits.

All grantees of public way agreements, franchisees, and lessees of city properties are required to obtain construction permits, as required in Chapter 12.24 ACC, for installing utility, cable and telecommunications facilities. However, nothing in this title shall prohibit the city and a grantee, franchisee, or lessee from agreeing to alternative plan review, permit, and construction procedures for a public way agreement, franchise, or lease granted under this title, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.080 Interference with the public ways.

No grantee, franchisee, or lessee may locate or maintain its utility, cable or telecommunications facilities so as to unreasonably interfere with the use of the

public ways by the city, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities which unreasonably interfere with the use of the city's public ways as determined by the public works director, shall be moved in accordance with provisions in ACC 20.10.130, by the grantee, franchisee, or lessee, at the grantee, franchisee, or lessee's cost, temporarily or permanently, as determined by the public works director. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.090 Damage to property.

No grantee, franchisee, or lessee, nor any person acting on behalf of a grantee, franchisee, or lessee shall take any action or permit any action to be taken which may impair or damage any city property, public ways of the city, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.100 Notice of work.

Unless otherwise provided in a public way agreement, franchise, or lease agreement, no grantee, franchisee, or lessee, nor any person acting on behalf of the grantee, franchisee, or lessee shall commence any nonemergency work in or about the public ways of the city, other ways, or upon city property without 10 working days' advance written notice to the city which notice shall include the location of the work to be done, a detailed description of the work to be done, and a schedule for completion. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.110 Repair and emergency work.

In the event of an emergency, a grantee, franchisee, or lessee may commence such repair and emergency response work as required under the circumstances, provided

~~the grantee, franchisee, or lessee shall notify the city in writing as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. The city may act without prior written notice in case of emergency. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.120 Maintenance of facilities.~~

~~Each grantee, franchisee, or lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.130 Abandonment, relocation or removal of facilities.~~

~~Within 30 days following written notice from the city, a grantee, franchisee, or lessee shall, at its sole expense, temporarily or permanently remove, relocate, change, or alter the position of any commercial utility, cable or telecommunications facilities within the public ways or upon city property whenever the city public works director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:~~

~~A. The construction, repair, maintenance, or installation of any city or other public improvement in or upon the public ways; and~~

~~B. The operations of the city, utility providers, or other governmental entity in or upon the public ways; and~~

~~C. Facilities are deemed by the city as abandoned due to failure to cure of the grantee, franchisee, or lessee.~~

~~However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within 24 hours. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.140 Building moving.~~

~~Whenever any person shall have obtained permission from the city to use any street or public way for the purpose of moving any building, a grantee, franchisee, or lessee, upon seven calendar days' written notice from the city, shall raise or remove, at the expense of the person desiring to move the building, any of the grantee, franchisee, or lessee's utility wires, poles, or facilities which may obstruct the moving of such building; provided, that the person desiring to move the building shall comply with all requirements of the city for the moving of buildings. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.150 Removal of unauthorized facilities.~~

~~Within 30 days following written notice from the city, any commercial utility, telecommunications carrier, operator, lessee or other person who owns, controls, or maintains any unauthorized cable or telecommunications system, facility, or related appurtenances within the public ways or upon property of the city shall, at its own expense, remove such facilities or appurtenances from the public ways of the city. A utility, cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:~~

~~A. Upon expiration or termination of the grantee, lessee, or franchisee's public way agreement, franchise, or lease;~~

~~B. Upon leaving any system or facility within the public ways or upon property of the city, any such property of a grantee, franchisee, or lessee shall be deemed abandoned if left in place 90 days after expiration or termination of a public way agreement, franchise, or lease;~~

~~C. If the system or facility was constructed or installed without the prior approval of a public way agreement, franchise or lease;~~

~~D. If the system or facility was constructed or installed without the prior issuance of a required construction permit;~~

~~E. If the system or facility was constructed or installed at a location not permitted by a public way agreement, franchise or lease.~~

~~Provided, however, that the city may, in its sole discretion, allow a grantee, franchisee, or lessee or other such persons who may own, control, use, or maintain commercial utility, cable or telecommunications facilities within the public ways of the city or upon city property to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the city. Any plan for abandonment or removal of a grantee's, franchisee's, or lessee's facilities must be first approved by the public works director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment in place of the facilities such facilities shall become the city's property, and such persons shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. The provisions of this section shall survive the expiration, revocation, or termination of a public way agreement, franchise, or lease granted under this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.160 Emergency removal or relocation of facilities.~~

~~The city retains the right and privilege to cut or move any commercial utility, cable or telecommunications facilities located within the public ways of the city and upon city property, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The city shall not be liable to any utility, cable operator, telecommunications carrier, operator, or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the city's actions under this section. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.170 Damage to facilities.~~

~~Unless directly and proximately caused by the willful, intentional, or malicious acts by the city, the city shall not be liable for any damage to or loss of any commercial utility, cable, or telecommunications facilities upon city property or within the public ways of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such city property or within the public ways by or on behalf of the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.180 Restoration of public ways, other ways, city property and public/private utility property.~~

~~A. When a grantee, franchisee, lessee, or any person acting on behalf such persons, does any work in or affecting any public ways, other ways, city property, or public/private utilities located in the public ways, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the city.~~

~~B. If weather or other conditions do not permit the complete restoration required by this section, or other city codes, regulations or policies, the grantee, franchisee, or lessee shall temporarily restore the affected public ways, other ways, or property. Such temporary restoration shall be at the grantee's, franchisee's, or lessee's sole expense and the grantee, franchisee, or lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.~~

~~C. A grantee, franchisee, lessee or other person acting on behalf of such persons shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or~~

~~damage to any person, vehicle, or property by reason of such work in or affecting such public ways, other ways, or property.~~

~~D. The public works director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and city property following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of a public way agreement, franchise, lease, or other agreement granted pursuant to this title or Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.190 Facilities maps.~~

~~Each grantee, franchisee, and lessee shall provide the city with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of their commercial utility or telecommunications facilities within the public ways and upon city property. Each grantee, franchisee, and lessee shall provide the city with updated maps annually or upon written request by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.200 Duty to provide information.~~

~~Within 10 working days of a written request from the city, each grantee, franchisee, or lessee shall furnish the city with information sufficient to demonstrate:~~

~~A. That the grantee, franchisee, or lessee has complied with all requirements of this title; and~~

~~B. That all sales, utility and/or telecommunications or other taxes or assessments due the city in connection with the commercial utility, cable, or telecommunications services and facilities provided by the grantee, franchisee, or lessee have been properly collected and paid by the grantee, franchisee, or lessee.~~

All books, records, maps and other documents, maintained by the grantee, franchisee, or lessee with respect to its utility or telecommunications facilities within the public ways and upon city property shall be made available for inspection by the city at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require a grantee, franchisee, or lessee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a grantee, franchisee, or lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Such information shall be held in strict confidence, as allowed by law, by the city and used only for the purpose stated herein. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.210 Leased capacity.

A grantee, franchisee, or lessee shall have the right to offer or provide capacity or bandwidth to its customers consistent with such permit, franchise, or lease; provided:

A. The grantee, franchisee, or lessee shall furnish the city with a copy of any such lease or agreement between the grantee, franchisee, or lessee and the customer or sub-lessee or provide to the city's finance director sufficient information to determine whether the lessee or customer is subject to city taxes or assessments; and

B. The sub-lessee fulfills all requirements of Chapters 3.84 and 3.88 ACC regarding the reporting of all revenues subject to city taxes and assessments; and

C. Lessee must comply with the city's registration requirements in Chapter 5.84 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.220 Insurance.

Unless otherwise provided in a public way agreement, franchise, or lease agreement, each grantee, franchisee, or lessee shall, as a condition of the permit or public way agreements, franchises, or leases, secure, and maintain the following liability

~~insurance policies insuring both the grantee, franchisee, or lessee and the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee, franchisee, or lessee:~~

~~A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:~~

~~1. Five million dollars for bodily injury or death to each person;~~

~~2. Five million dollars for property damage resulting from any one accident; and~~

~~3. Five million dollars for all other types of liability;~~

~~B. Automobile liability for owned, nonowned and hired vehicles with a limit of $3,000,000 for each person and $3,000,000 for each accident;~~

~~C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000;~~

~~D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000;~~

~~E. The liability insurance policies required by this section shall be maintained by the grantee, franchisee, or lessee throughout the term of the public way agreement, franchise, or lease, and such other period of time during which the grantee, franchisee, or lessee is operating without a public way agreement, franchise, or lease hereunder, or is engaged in the removal of its telecommunications facilities. The grantee, franchisee, or lessee shall provide an insurance certificate, together with an endorsement naming the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the city prior to the commencement of any work or installation of any~~

~~utility or telecommunications facilities pursuant to said public way agreement, franchise, or lease. Any deductibles or self-insured retentions must be declared to and approved in writing by the city prior to the franchise becoming effective. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee, franchisee, or lessee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee, franchisee, or lessee's insurance shall be primary insurance as respects the city, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the city, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee, franchisee, or lessee's insurance and shall not contribute with it;~~

~~F. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain the following endorsement:~~

> ~~It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 60 days after receipt by the City, by registered mail, (return receipt requested) of a written notice addressed to the City Clerk of such intent to cancel or not to renew.~~

~~G. Within 30 days after receipt by the city of said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the grantee, franchisee, or lessee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this section. Any lapse in the required insurance coverage shall be cause for termination of any public way agreement, franchise, or lease. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.230 General indemnification.~~

~~No public way agreement, franchise, or lease shall be deemed to be granted under this title unless it includes an indemnity clause substantially conforming to the following:~~

> ~~The grantee, franchisee, or lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by the grantee, franchisee, or lessee's own employees to which the grantee, franchisee, or lessee might otherwise be immune under RCW Title 51, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in performing under this Public Way Agreement, franchise, or lease are the proximate cause. The grantee, franchisee, or lessee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by the grantee, franchisee, or lessee's own employees, including those claims to which the grantee, franchisee, or lessee might otherwise have immunity under RCW Title 51, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the grantee, franchisee, or lessee's exercise of the rights granted herein, or by virtue of the City's permitting the grantee, franchisee, or lessee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the grantee, franchisee, or lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Public Way Agreement, franchise, or lease, or pursuant to any other permit or approval issued in connection with this Public~~

~~Way Agreement, Franchise, or Lease. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this Public Way Agreement, Franchise, or Lease.~~

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

~~In the event that the grantee, franchisee, or lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the grantee, franchisee, or lessee, then the grantee, franchisee, or lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.~~

~~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 grantee, franchisee, or lessee, and the City, its officers, employees and agents, the grantee, franchisee, or lessee's liability hereunder shall be only to the extent of the grantee, franchisee, or lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein~~

~~constitutes the grantee, franchisee, or lessee's waiver of immunity under RCW Title 51, 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 any Public Way Agreement, Franchise, or Lease agreement.~~

~~Notwithstanding any other provisions of this Title, the grantee, franchisee, or lessee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. The grantee, franchisee, or lessee releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of the grantee, franchisee, or lessee's facilities caused by or arising out of activities conducted by the city, its officers, agents, employees, and contractors, in the public ways, rights-of-way, easements, or property subject to this Public Way Agreement, Franchise, or Lease, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors. The grantee, franchisee, or lessee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the grantee, franchisee, or lessee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.~~

~~(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.240 Performance and construction surety.~~

~~Before a public way agreement, franchise, or lease granted pursuant to this title is effective, and as necessary thereafter, the grantee, franchisee, or lessee shall provide and deposit such moneys, bonds, letters of credit, or other instruments in form and substance acceptable to the city as may be required by this title or by an applicable public way agreement, franchise, or lease agreement. All performance bonds for grantees, franchisees, and lessees shall satisfy the minimum standards established by the public works department at the time of the grantees', franchisees', and lessees' application. (Construction bond section(s) of Standard Specifications for Road, Bridge, and Municipal Construction for Washington State Department of Transportation and American Public Works Association).~~

~~Construction bonds sureties shall be provided as required by Washington State laws. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.250 Security options.~~

~~In order to secure the conditions agreed to in any agreement negotiated under this title, for the full term of such agreements, each grantee, franchisee, or lessee shall establish a permanent security bond, assignment of funds, or an unconditional letter of credit from a Washington State bank with the city by either providing the city engineer a standing warranty bond or by depositing the amount of funds as follows in a Washington state bank utilizing the city's standard assignment form, or by provision of the letter of credit. The amount of security shall be 10 percent of the city engineer's estimate of the performance bond amount (ACC 20.10.260) based upon the total scope of work proposed within the public ways, or $50,000, whichever is less, or such lesser amount determined by the public works director to be sufficient. The security shall be maintained at the sole expense of the grantee, franchisee, or lessee so long as any of the grantee, franchisee, or lessee's utility, cable or telecommunications facilities are located within the public ways of the city or upon city property and until released by the city. In the event a security involves a bank,~~

~~the grantee, franchisee, or lessee is responsible for negotiating any interest that may accrue to the account during the duration of effect. Should the agreement being secured be terminated, the finance director will coordinate with other departments and determine if any portion of the security may be released by the city.~~

~~A. The security shall secure the full and complete performance of the requirements of this title, including any costs, expenses, damages, or loss the city pays or incurs, including civil penalties, because of any failure attributable to the grantee, franchisee, or lessee to comply with any applicable legal requirements including, but not limited to, the codes, ordinances, rules, regulations, or permits of the city.~~

~~B. Before the city executes on the security bond or any sums are withdrawn from the security fund, the city shall give written notice to the grantee, franchisee, or lessee:~~

~~1. Describing the act, default or failure to be remedied, or the damages, costs or expenses which the city has incurred by reason of grantee, franchisee, or lessee's act, default, or failure;~~

~~2. Providing a reasonable opportunity for grantee, franchisee, or lessee to first remedy the existing or ongoing default or failure, if applicable;~~

~~3. Providing a reasonable opportunity for grantee, franchisee, or lessee to pay any moneys due the city before the city executes the bond or withdraws the amount thereof from the security fund, if applicable; and~~

~~4. That the grantee, franchisee, or lessee will be given an opportunity to review the act, default or failure described in the notice with the city or designee.~~

~~C. Grantees, franchisees and lessees shall replenish the security bond or fund within 14 calendar days after written notice from the city that there is a deficiency in the amount of the bond or fund. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.260 Performance bond.~~

~~All performance bonds provided in accordance with this title shall comply with the minimum standards in Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.270 Coordination of construction activities.~~

~~ACC 20.10.100 notwithstanding, all grantees, franchisees and lessees, are required to cooperate with the city and with each other.~~

~~A. By November 15th of each year, grantees, franchisees and lessees shall provide the city with a schedule of their proposed construction activities which may affect the public ways in any manner.~~

~~B. Each grantee, franchisee and lessee shall meet with the city, other grantees and franchisees and users of the public ways annually or as determined by the city to schedule and coordinate construction which may affect the public ways in any manner.~~

~~C. All construction locations, activities and schedules shall be coordinated, as required by the city public works director, to minimize public inconvenience, disruption or damages.~~

~~D. Each grantee, franchisee and lessee shall be available to city staff employees of a city department having jurisdiction over their respective activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, use, maintenance, or removal of commercial utility or telecommunications system facilities. The city must be able to contact by telephone the network control center of each grantee, franchisee and lessee. A telephone number at which an employee can be reached 24 hours a day, seven days a week regarding such problems or complaints must be provided by each grantee, franchisee~~

and lessee before any public way agreement, franchise, or lease is effective. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.280 Assignments or transfers of public way agreements, franchises, or leases.

The assignment or transfer of any business registration, public way agreement, franchise or lease subject to this title may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, franchisee, or lessee, by operation of law or otherwise, without the prior written consent of the city, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No public way agreement, franchise, or lease, subject to this title, shall be assigned or transferred before construction of such systems has been completed to the city's satisfaction without prior written consent of the city, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

B. The grantee, franchisee, or lessee and the proposed assignee or transferee of the public way agreement, franchise, or lease shall provide and certify the following information to the city not less than 90 calendar days prior to the proposed date of transfer:

1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment relating to the public way agreement, franchise or lease;

2. All information required by a public way agreement, franchise, or lease applicant pursuant to this title with respect to the proposed transferee or assignee;

3. Any other information reasonably required by the city; and

4. A nonrefundable application fee in the amount established in the city's fee schedule.

C. No transfer shall be approved unless the assignee or transferee meets the requirements contained in ACC 20.04.040(A) and (I) and can comply with the requirements of the public way agreement, franchise, or lease.

D. Unless otherwise provided in a public way agreement, franchise, or lease agreement, the grantee, franchisee, or lessee shall reimburse the city for all direct and indirect costs and expenses reasonably incurred by the city in considering a request to transfer or assign a public way agreement, franchise, or lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of a public way agreement, franchise, or lease without prior written approval of the city under this section or pursuant to a public way agreement, franchise, or lease agreement shall be void and is cause for termination of the public way agreement, franchise, or lease. (Ord. 6718 § 5 (Exh. E), 2019; Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.290 Transactions affecting control of public way agreements, franchises, or leases.

Any transactions which singularly or collectively result in a change of 50 percent or more of the ownership or working control of any grantee, franchisee, or lessee of the ownership or working control of a utility, cable, or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the grantee, franchisee, or lessee or of a telecommunications system, or of control of the capacity or bandwidth of the grantee, franchisee, or lessee's utility, cable, or telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring city approval pursuant to ACC 20.10.280.

~~Transactions between affiliated entities are not exempt from the required city approval. A grantee, franchisee, or lessee shall promptly notify the city in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of a grantee's, franchisee's, or lessee's company. Every change, transfer, or acquisition of control of a grantee's, franchisee's, or lessee's company shall cause a review of the proposed transfer. In the event that the city council adopts a resolution or other appropriate order opposing such change, transfer or acquisition of control has been effected, the city may terminate the public way agreement, franchise, or lease. City approval shall not be required for mortgaging purposes or if said transfer is from a grantee, franchisee, or lessee to another person or entity controlling, controlled by, or under common control with a grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.300 Revocation or termination of public way agreements, franchises, or leases.~~

~~A public way agreement, franchise, or lease granted by the city to use or occupy public ways of the city or city property may be terminated or revoked for the following reasons:~~

~~A. Construction or operation in the city or in the public ways of the city or upon city property without a public way agreement, franchise, or lease;~~

~~B. Construction or operation at an unauthorized location;~~

~~C. Unauthorized substantial transfer of control of a grantee, franchisee, or lessee;~~

~~D. Unauthorized assignment of a public way agreement, franchise, or lease;~~

~~E. Unauthorized sale, assignment or transfer of a grantee's, franchisee's, or lessee's public way agreement, franchise, lease, assets, or a substantial interest therein;~~

F. Misrepresentation or lack of candor by or on behalf of a grantee, franchisee, or lessee in any application or written or oral statement upon which the city relies in making the decision to approve, review or amend any public way agreement, franchise, or lease pursuant to this title;

G. Abandonment of cable or telecommunications facilities in the public ways or upon city property;

H. Failure to relocate or remove facilities as required in this title;

I. Failure to pay taxes, compensation, fees, assessments, or costs when and as due to the city;

J. Insolvency or bankruptcy of the grantee, franchisee, or lessee;

K. Violation of any material provision of this title; and

L. Violation of the material terms of a public way agreement, franchise, or lease agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.310 Notice and duty to cure.

In the event that the city believes that grounds exist for termination or revocation of a public way agreement, franchise, or lease, the grantee, franchisee, or lessee shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee, franchisee, or lessee a reasonable period of time not exceeding 30 days to correct the violation or furnish evidence as to:

A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance; or

B. That rebuts the alleged violation or noncompliance; or

C. That it would be in the public interest to impose some penalty or sanction less than revocation. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.320 Public hearing.

In the event that a grantee, franchisee, or lessee fails to respond to the notice described in ACC 20.10.310 pursuant to the procedures set forth therein, or in the event that the alleged violation is not remedied within the prescribed period of time after notification of the alleged violation pursuant to ACC 20.10.310, the city council shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled hearing of the city council which is scheduled at a time which is no less than five business days therefrom. The city shall notify the grantee, franchisee, or lessee of the time and place of such public hearing and provide the grantee, franchisee, or lessee with an opportunity to be heard. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.330 Standards for revocation or lesser sanctions.

If the city council determines that a grantee, franchisee, or lessee willfully violated or failed to comply with any of the provisions of this title or any provision of a public way agreement, franchise, or lease granted under this title, or through willful misconduct or gross negligence failed to heed or comply with any notice given the grantee, franchisee, or lessee by the city under the provisions of this title, then the grantee, franchisee, or lessee shall, at the election of the city council, forfeit all rights conferred under the public way agreement, franchise, or lease, and the public works agreement, franchise, or lease may be revoked, terminated, or annulled by the city council. The city council may elect, in lieu of revocation, termination, or annulment, and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order from the superior court having jurisdiction compelling the grantee, franchisee, or lessee to comply with the provisions of this title and any public way agreement, franchise, or lease granted

~~hereunder, and to recover reasonable and documented damages and costs incurred by the city by reason of the grantee, franchisee, or lessee's failure to comply. The city council shall utilize, but is not limited to, the following factors in analyzing the nature, circumstances, extent, and gravity of any violation(s) in making its determination under this section:~~

~~A. Whether the misconduct was egregious;~~

~~B. Whether substantial harm resulted;~~

~~C. Whether the violation was intentional;~~

~~D. Whether there is a history of prior violations of the same or other requirements;~~

~~E. Whether there is a history of overall compliance;~~

~~F. Whether the violation was voluntarily disclosed, admitted or cured. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.340 Civil penalties.~~

~~A. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this title shall be subject to a penalty in an amount not less than $100.00 nor more than $1,000 per day for each violation from the date of each violation until compliance is achieved.~~

~~B. In addition to any penalty which may be imposed by the city council, any person violating or failing to comply with any of the provisions of this title shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.~~

~~C. The violator may show the city council as full or partial mitigation:~~

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

D. The penalties which may be imposed by this section shall be collected by civil action brought by the city if not paid timely after penalty assessment by the city council. The public works director or designee shall notify the finance director in writing of the name of any person subject to the penalty, and the finance director shall take appropriate action to collect the penalty. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.350 Enforcement.

Subject to applicable federal and state law, in the event the city council, after such public hearing, determines that a grantee, franchisee, or lessee is in default of any provision of a public way agreement, franchise, or lease, it may:

A. Require foreclosure on all or any part of any security provided under this title, or a specific public way agreement, franchise, or lease, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the city reasonably determines is necessary to remedy the default;

B. Call for commencement of an action at law for monetary damages or other equitable relief;

C. After the expiration of said 30-day period to cure violation (ACC 20.10.310), the city may be directed to act to remedy the violation and charge the reasonable and documented costs and expenses of such action to the grantee, franchisee, or lessee;

D. In the case of a material breach of the public way agreement, franchise, or lease, declare the public way agreement, franchise, or lease to be terminated or revoked;

E. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

F. Grantees, franchisees, or lessees shall not be relieved of any obligations to comply promptly with any provision of a public way agreement, franchise, or lease by reason of any failure of the city to promptly enforce compliance;

G. In addition to other remedies provided herein, if a grantee, franchisee, or lessee is not in compliance with requirements of this title, and if a good faith dispute does not exist concerning such compliance, the city may place a moratorium on issuance of any pending permits until compliance is achieved;

H. A grantee, franchisee, or lessee shall not be held in default or noncompliance with the provisions of a public way agreement, franchise, or lease nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control;

I. Assess civil penalties pursuant to ACC 20.10.340;

J. The city may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this title when civil penalties are inadequate to effect compliance;

K. In addition to the penalties set forth in this section, violation of the terms of this title may also result in the revocation or termination of any public way agreement, franchise, approval, lease, or permit issued or granted hereunder, as set forth in ACC 20.10.300 through 20.10.340. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.360 Other remedies.~~

~~Nothing in this title shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.370 Venue of any court action.~~

~~All public way agreements, franchises, and leases subject to this title shall be governed and construed by and in accordance with the laws of the state of Washington. In the event that suit is brought by a party to a public way agreement, franchise, or lease subject to this title, the parties agree that jurisdiction of such action shall be vested exclusively in the King County Superior Court for the State of Washington, or in the United States District Court for the Western District of Washington located in Seattle, Washington. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.380 Action by the FCC.~~

~~In the event the FCC promulgates more stringent notice requirements, technical standards, consumer protection or consumer services requirements than are contained in agreements or franchises subject to this title, those more stringent requirements shall prevail. The city shall give reasonable written notice when, in their determination, that has occurred. Grantees, franchisees, and lessees shall retain and not waive any or all rights and privileges as afforded either under existing contracts or agreements or pursuant to federal law or FCC regulations to complain and/or appeal such a determination. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.390 Incorporation by reference.~~

~~The provisions of this chapter shall be incorporated by reference in any public way agreement, franchise, or lease approved hereunder. The provisions of this chapter shall be incorporated by reference in any proposal submitted and accepted by the city in the applicable public way agreement, franchise, or lease. However, in the event of any conflict between the proposal, this chapter, and the public way agreement, franchise, or lease, the public way agreement, franchise, or lease shall be the prevailing document. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.400 Notice of entry on private property.~~

~~If directed by the city, a grantee, franchisee, or lessee shall, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, provide a notice indicating the nature and location of the work to be performed. The notice shall be physically posted, at no expense to the city or private property owner or resident, upon the affected property by the grantee, franchisee, or lessee. A door hanger may be used to comply with the notice and posting requirements of this section. A grantee, franchisee, or lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; provided, however, that nothing in this title shall permit a grantee or franchisee to unlawfully enter or construct improvements upon the property or premises of another. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.410 Safety requirements.~~

~~A grantee, franchisee, or lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and~~

maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a permit, public way agreement, franchise, or lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The city reserves the general right to see that the telecommunications systems of a grantee, franchisee, or lessee are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the city, the city will, after discussions with a grantee, franchisee, or lessee, establish a reasonable time frame for a grantee, franchisee, or lessee to make necessary repairs. If the repairs are not made within the established time frame, the city may make the repairs itself or have them made and collect all reasonable costs thereof from a grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.420 Most favored community.

In the event that a grantee, franchisee, or lessee enters into any agreement, franchise or other understanding with any other city, town or county in the state of Washington which provides terms or conditions more favorable to the city, town or county than those provided in its agreement with the city, such as, but not limited to, free or reduced fee hookups, access or service, the city shall be entitled to request at the city's option, and the grantee, franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions at the grantee's, franchisee's, or lessee's lowest comparable rate applicable to any government body or municipality in the state of Washington. (See ACC 20.06.180(N), Best Rates). (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

~~20.10.430 Compliance with zoning standards.~~

~~All applications for leases, franchises, and public way agreements under this title will comply with the city zoning regulations and siting standards in ACC Title 18. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.440 Unfunded mandate.~~

~~The city intends that no federal or state requirement to promote the deregulation of utilities or telecommunications shall become an unfunded mandate requiring funding support from the city over and above its routine operations and maintenance budget to maintain the public ways. Therefore, except as expressly provided to the contrary, all costs incurred by a grantee, franchisee, or lessee in complying with the terms and conditions of any agreement subject to this title or any applicable laws, ordinances, codes, rules, regulations and/or orders or any action thereunder shall be the sole responsibility of the respective grantee, franchisee, or lessee and shall not be the responsibility of or charged to the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.450 Care of trees along streets.~~

~~Upon prior written approval of the city and in accordance with city ordinances, any grantee, franchisee, or lessee 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 facilities of the respective grantee, franchisee, or lessee. The grantee, franchisee, or lessee 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 grantee, franchisee, or lessee 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 a city land clearing permit. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.460 Use of utility poles and facilities of others.~~

~~Grantees and franchisees may seek to contract with the city or any appropriate board or agency thereof or with the holder or owner of any utility franchise in the city for the use, rental or lease of its or their poles and other structures and facilities for the purpose of extending, carrying or laying telecommunications facilities, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the operation of its telecommunications system. The city agrees that any public utility owning or controlling such poles or other structures or facilities may, without amendment to its franchise, allow, and is encouraged to allow, grantees and franchisees to make such use thereof pursuant to any agreement reached between the affected parties. City-owned poles are limited to street light and traffic signal poles which generally are not intended for use by others. The city reserves the right to determine on a case-by-case basis that particular circumstances require that a certain city-owned pole is not appropriate for use. No grantee or franchisee will utilize any city-owned poles prior to approval by the city engineer. Any compensation for uses of city-owned poles will be based upon the prevailing market rates for similar uses in the region. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.470 Use of poles and facilities by city.~~

~~With respect to poles and trenches which are facilities and which are (1) wholly owned by a franchisee or grantee, and (2) within the franchise area, the city, subject to franchisee's or grantee's prior written consent, may install and maintain city-owned overhead facilities upon such poles, and conduits in open trenches, for police, fire, illumination, and other noncommercial communications purposes, subject to the following:~~

~~A. Such installation and maintenance shall be completed at the city's expense;~~

~~B. The franchisee or grantee shall have no obligation under the indemnification provisions of this franchise or public way agreement for the installation or maintenance of such city-owned facilities or conduits;~~

~~C. Nothing herein shall require the franchisee or grantee to bear any cost or expense in connection with such installation and maintenance of city-owned facilities or conduits, nor shall such city installation delay or adversely effect franchisee's or grantee's construction schedule;~~

~~D. In no case shall the city attach to or come into contact with grantee's or franchisee's equipment. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

~~20.10.480 Administration.~~

~~The public works director or designee shall administer all public way agreements and franchises subject to this title, and the finance director or designee shall administer all leases subject to this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)~~

Chapter 20.12

~~OPEN VIDEO SYSTEMS~~

~~(Reserved)~~REPEALED

Chapter 20.14

SMALL WIRELESS FACILITIES WITHIN THE PUBLIC ~~RIGHTS-OF-~~WAY

Sections:

20.14.010 Overview.
20.14.020 Application for small wireless facilities permits.
20.14.030 Implementation – Small wireless facilities permits.
20.14.040 Small wireless facility permit review process.
20.14.050 Deviations.
20.14.060 Small wireless facility approvals and processes.
20.14.070 Additional review procedures.
20.14.080 Compliance with federal processing limitations.
20.14.090 Design standards.
20.14.100 Noninterference.
20.14.110 Facility removal.

20.14.010 Overview.

A. Service providers or any other persons or entities who seek to use the public ~~right-of-~~way for small wireless facilities deployment to provide personal wireless service, data transmission, or other related services, must have a valid franchise under Chapter ~~20.06~~20.04 ACC to use the ~~right-of-~~public way and a small wireless facility permit to deploy that technology at each proposed location. Entities with franchises who wish to use a small wireless facility deployment to upgrade or expand their existing services will use the processes set forth in this chapter to obtain approval of specific installations. An entity without a franchise will apply for a franchise as well as a small wireless facility permit for its initial deployment, and the applications will be processed concurrently.

B. Nothing in this chapter revises or diminishes the rights and obligations of an existing franchise.

C. Nothing herein shall exempt ~~S~~small wireless facilities deployment ~~elements that require~~from SEPA ~~review may use these processes only in conjunction with SEPA review~~compliance.

D. For purposes of this chapter, “small wireless facilities” are defined as facilities that meet the following conditions:

1. The facilities:

a. Are mounted on structures 50 feet or less in height, including their antennas as defined in 47 CFR 1.1320(d); or

b. Are mounted on structures no more than 10 percent taller than other adjacent structures; or

c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and

2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR 1.1320(d)), is no more than three cubic feet in volume; and

3. All other wireless equipment associated with the structure (including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure) is no more than 28 cubic feet in volume; and

4. The facilities do not require antenna structure registration under Code of Federal Regulations, Title 47, Part 17; and

5. The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

6. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b); and

7. The facilities are currently located or are proposed to be located within the public ~~right-of-~~way. For facilities currently located or proposed to be located on private property, please see Chapter 18.31 ACC. For facilities currently located or proposed to be located on public property or facilities, please see Chapter 20.08 ACC. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.020 Application for small wireless facilities permits.

For locations in the public ~~right-of-~~way, the director of public works ("director") is charged with administration of small wireless facilities deployments and other small wireless facilities permit review processes for use of public ~~right-of-~~way established under this chapter.

Unless previously provided with an application for a franchise, the following information will be provided by all applicants seeking to use small wireless facilities deployment:

A. Specific locational information, including GPS coordinates of all proposed facilities; and

B. Specific design information and plans, addressing poles or other support structures, attachments, conduit, and any ground-mounted equipment; and

C. A narrative addressing how the proposed plans are consistent with the franchise exhibit(s), if applicable, or otherwise meet the design requirements of this chapter, and otherwise as required within the ACC; and

D. A concealment plan demonstrating how the proposed small wireless facilities comply with the C~~c~~ity of Auburn engineering design and construction standards; and

E. Provision of proof of Federal Communications Commission and other regulatory approvals required to provide the service(s) or use the technologies sought to be installed; and

F. Provision of proof that the proposed facilities will not interfere with the city's automated metering infrastructure (AMI), telemetry (SCADA), automated light meter facilities, or other city communication facilities; and

G. Provision of proof from pole or structure owners that the additional load of small wireless facilities can be accommodated by the poles or structures or if the city is the pole or structure owner, proof of compliance with Chapter 20.08 ACC; and

H. Any other information determined by the director to be necessary for processing the application.

Permits issued under this chapter will not supplant any other permits required under ~~federal or state~~applicable law, or the Auburn City Code, including, but not limited to, Chapters 12.24 and 13.32A ACC. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.030 Implementation – Small wireless facilities permits.

The rights granted under a franchise are implemented through the issuance of small wireless facilities permits. The franchise application, required under Chapter 20.04 ~~20.06~~ ACC, may be accompanied by one or more applications for a small wireless facilities permit to deploy small wireless facilities. An initial franchise and any related small wireless facilities permit applications will be processed concurrently.

A. Up to five sites may be specified in one small wireless facilities permit application for processing.

B. Issuance of a small wireless facilities permit to install small wireless facilities will be contingent upon approval of a franchise under Chapter 20.04 ~~20.06~~ ACC, or the possession of a valid franchise.

C. Any element of a deployment that qualifies as an eligible facilities request under 47 CFR ~~1.40001~~ 1.600 will be specifically designated by the applicant and may be addressed separately by the director in order to comply with the shot clocks established by ~~federal~~ applicable law.

D. The director may approve, deny, or conditionally approve all or any portion of the sites proposed in a small wireless facilities permit application. Any denial of an application under this chapter must be made in writing and be supported by substantial evidence.

E. Any application for a small wireless facilities permit that contains an element that is not exempt from SEPA review will simultaneously submit a SEPA Environmental Checklist under Chapter 43.21C RCW and Chapter 16.06 ACC.

F. The city recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation based upon the environmental effects of electromagnetic radio frequency emissions and small wireless facilities that meet Federal Communications Commission standards will not be conditioned or denied on the basis of environmental effects of radio frequency or electromagnetic frequency impacts. Applicants for small wireless facilities will be required to provide the city information on the projected power density of the facility and compliance with the Federal Communications Commission requirements. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.040 Small wireless facility permit review process.

The following provisions relate to applications for a small wireless facility permit:

A. *Federal Law.* Review of the site locations proposed by the applicant will be governed by the provisions of 47 USC 253 and 47 USC 332 and applicable ~~regulations and case~~ law. Applicants will be treated in a competitively neutral and nondiscriminatory manner with other service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. ~~Small wireless facilities permit review under this chapter will neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.~~

B. *Concealment.* The city will permit small wireless facility deployment on existing or replacement poles or structures conforming to the city's generally applicable pole

design standards, the city's engineering design and construction standards, the concealment element plan approved as part of the small wireless facilities permit(s), and consistent with the relevant franchise exhibit (if applicable). Small wireless facilities may not be expanded unless the expansion does not defeat the facility's ~~required~~ concealment elements.

C. The director will review applications for small wireless facilities permits for consistency with relevant franchise exhibits, ~~and~~ design standards, and applicable law.

D. Small wireless facilities ~~permits~~ applications to install facilities will be processed within the time frames set by applicable federal regulations.

E. The decision of the director to approve a small wireless facility permit will be final and is not subject to appeal under city code or further legislative review. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.050 Deviations.

Any request for deviations from the approved small cell facilities design designated in the franchise, or any previously approved small wireless facility permit, will be considered a new small wireless facilities permit request. An applicant seeking approval of a deviation from an approved small wireless facilities permit will apply for a new small wireless facilities permit. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.060 Small wireless facility approvals and processes.

Approval of a small wireless facility permit and/or other approval referenced in this chapter are conditioned on the following requirements:

A. Satisfy applicable ~~bulk~~ requirements, such as noise and light regulations.

B. Comply with adopted design and concealment standards as provided by the city's engineering design and construction standards.

C. Obtain the written approval of the owner of any pole or structure for the installation of its facilities on such pole or structure. Approval of a franchise under Chapter ~~20.06~~20.04 ACC does not authorize attachment to city-owned poles or other structures.

D. Unless specifically provided for in a franchise, obtain a lease or other applicable authorization from the city to use city-owned poles, ground space or infrastructure for the installation of any small wireless facility, or to locate any new ground-based structure, base station, or other attendant equipment on city owned facilities or property ~~right-of-way~~.

E. Comply with all city construction standards and state and federal codes when operating in the ~~right-of-~~public way and obtain a required permit to enter the ~~right-of-~~public way for construction.

F. If the applicant does not take action in good faith, the application will be considered abandoned after 180 days of non-action. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.070 Additional review procedures.

Small wireless facilities in shorelines management zones or environmentally critical areas are subject to review as provided in Chapters 16.08 and/or 16.10 ACC. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.080 Compliance with federal processing limitations.

Review of small wireless facilities permits will comply with the provisions of 47 CFR Part 1, subpart U, if applicable. Applications will be reviewed, completeness

determined, and the time frame tolled as provided in this chapter and Chapter ~~20.06~~20.04 ACC. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.090 Design standards.

All small wireless facilities will be constructed or installed according to applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state and city regulations and standards, including the city of Auburn engineering design and construction standards. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.100 Noninterference.

Wireless facilities of any kind will not interfere with any emergency, communication, or utility infrastructure systems of the city.

A. If the city notifies service providers that their equipment is potentially interfering with public safety communications equipment, the providers will cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry – public safety “Best Practices Guide,” released by the FCC in February 2001, including the “Good Engineering Practices,” as may be amended or revised by the FCC from time to time.

B. If any service provider or facility owner fails to cooperate with the city in complying with the owner’s obligations under this section or if the FCC makes a determination of radio frequency interference with the city communications equipment, the owner who fails to cooperate and/or the owner of the facility or facilities which caused the interference will be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the city to determine the source of the interference. For the purposes of this subsection, failure to cooperate will include failure to initiate

any response or action as described in the “Best Practices Guide” within 24 hours of the city’s notification. (Ord. 6707 § 1 (Exh. A), 2018.)

20.14.110 Facility removal.

A small wireless facility will be removed:

A. Within 180 days of the date the facility’s use is discontinued, it ceases to be operational, the permit is revoked, or, if the facility falls into disrepair and is not maintained, within 90 days of a notice from the city to effect repairs and maintenance to the satisfaction of the city. The owner and/or operator of a facility will notify the city upon the discontinued use of a particular facility.~~; however,~~

B. If the owner and/or operator fails to remove the facility as required, then the facility is a nuisance and subject to appropriate legal proceeding in accordance with Chapter 1.25 ACC. (Ord. 6707 § 1 (Exh. A), 2018.)

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6799 (Gaub, Tate)

Date:
December 16, 2020

Department:
Community Development

Attachments:
Ordinance No. 6799
Agenda Bill - Ordinance No 6799 Rev 12.15.20
Ordinance No. 6799 Exhibit A-1

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

Administrative Recommendation:

City Council City Council introduce and adopt Ordinance No. 6799 for changes to Title 17, (Land Divisions and Adjustments) and Title 18, (Zoning) related to updating provisions for wireless telecommunications facilities.

Background Summary:

See Exhibit A

Reviewed by Council Committees:

Councilmember: Brown
Staff: Tate
Meeting Date: December 21, 2020
Item Number: ORD.D

ORDINANCE NO. 6799

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO REGULATION OF UNDERGROUND UTILITIES, INFRASTRUCTURE CONDUIT, AND WIRELESS COMMUNICATION FACILITIES, AND AMENDING SECTION 17.14.080, REPEALING CHAPTER 17.28, AND AMENDING SECTIONS 18.02.040, 18.04.912, 18.07.020, 18.23.030, 18.31.100, 18.31.110, AND 18.35.030 OF THE AUBURN CITY CODE

WHEREAS, the City of Auburn adopted Ordinance No. 4296 on July 18, 1988 repealing the previous Title 17 and enacting a new Title 17 entitled Land Adjustments and Divisions, which contains standards, regulations and processes for the division of land and adjustment of property boundaries within the City; and

WHEREAS, the City of Auburn adopted Ordinance No. 6414 on July 16, 2012 creating a new Chapter 17.28 ACC relating to the requirement for construction of infrastructure conduits; and

WHEREAS, the City of Auburn adopted Ordinance No. 4229 on June 1, 1987 repealing the previous Title 18 and enacting a new Title 18 entitled Zoning, which divides the City into zones wherein the location, height, use of buildings, land, and zoning development standards are established, regulated and restricted in accordance with the comprehensive plan for the City; and

WHEREAS, the City of Auburn adopted Ordinance No. 5020 on September 15, 1997, Ordinance No. 6245 on June 1, 2009, and Ordinance Nos. 6433 and 6434 on November 5, 2012, relating to the definition, siting and zoning of wireless communication facilities in Title 18; and

WHEREAS, the City of Auburn has made updates and amendments as necessary within Title 17 and Title 18 for the regulation of wireless communication facilities since the adoption of Ordinance Nos. 4296, 4229, 5020, 6245, 6414, 6433, and 6434; and

WHEREAS, the industry and technology of wireless communication facilities continues to evolve as does the public's reliance on this form of communication; and

WHEREAS, due to changes in Federal and State regulations that govern the regulation of such industries and their presence within the City, it is necessary to update the Auburn City Code in all titles, chapters and sections that authorize, regulate, affect or otherwise govern the review, construction, placement and siting of such telecommunications, cable and other utility facilities on public or on private property; and

WHEREAS, the City also seeks to clarify and update terms, procedural requirements and approval processes for permits, for telecommunications, cable and other utility facilities placed on public and on private property; and

WHEREAS, the City of Auburn Planning Commission reviewed staff's recommended changes at a special meeting on October 20, 2020, held a public hearing at a regular meeting on November 4, 2020, November 17, 2020, and December 8, 2020, and recommended approval of the changes to the Titles set forth herein; and

WHEREAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to state agency review by the Washington State Department of Commerce on or about October 9, 2020; and

WHEREAS, the proposed amendments and changes to the Auburn City Code that are the subject of this Ordinance were also subject to State Environmental Policy Act review and decision issued October 19, 2020.

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

Section 1. Amendment to City Code. Section 17.14.080 of the Auburn City Code is amended to read as shown in Exhibit A.

Section 2. Amendment to City Code. Chapter 17.28 of the Auburn City Code is repealed as shown in Exhibit B.

Section 3. Amendment to City Code. Section 18.02.040 of the Auburn City Code is amended to read as shown in Exhibit C.

Section 4. Amendment to City Code. Section 18.04.912 of the Auburn City Code is amended to read as shown in Exhibit D.

Section 5. Amendment to City Code. Section 18.07.020 of the Auburn City Code is amended to read as shown in Exhibit E.

Section 6. Amendment to City Code. Section 18.23.030 of the Auburn City Code is amended to read as shown in Exhibit F.

Section 7. Amendment to City Code. Section 18.31.100 of the Auburn City Code is amended to read as shown in Exhibit G.

Section 8. Amendment to City Code. Section 18.31.110 of the Auburn City Code is amended to read as shown in Exhibit H.

Section 9. Amendment to City Code. Section 18.35.030 of the Auburn City Code is amended to read as shown in Exhibit I.

Section 10. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 11. 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 12. 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, or on January 1, 2021, whichever is later.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____

Title: Ordinance No. 6799	**Agenda Category:** ☐Consent ☐Resolution ☒Ordinance ☐Discussion	**Date:** 12/14/2020
Department: Public Works and Community Development	**Budget Impact: $0**	

Item Description (Appears on the Cover Agenda only):
An Ordinance amending Titles 17 and 18 of the Auburn City Code and repealing Chapter 17.28 of the Auburn City Code

Administrative Recommendation (Appears on Agenda Bill):
City Council introduce and adopt Ordinance No. 6799.

Background Summary:

Due to changes in Federal and State regulations that govern the regulation of utilities, telecommunications and cable facilities on public or private property, staff has determined that updates to the Auburn City Code related to the provisions for underground utilities, infrastructure conduit and wireless communication facilities are necessary.

Ordinance No. 6799 amends Section 17.14.080, repeals Chapter 17.28, amends Sections 18.02.040, 18.04.912, 18.07.020, 18.23.030, 18.31.100, 18.31.110, and 18.35.030 of the Auburn City Code. Key changes to these Sections and Chapter are as follows:

- Repeal of Chapter 17.28 ACC as it is duplicative and addressed in Chapter 13.32A ACC.
- Update Auburn City Code in conformance with current federal and state requirements related to wireless communication facilities.
- Modernize procedural provisions to reflect actual process.
- Minor changes to improve clarity and correct references throughout.

The City of Auburn Planning Commission reviewed the proposed amendments and changes to Title 17 and 18 at a special meeting on October 20, 2020, held a public hearing at a regular meeting on November 4, 2020, November 17, 2020 and on December 8, 2020, and recommended approval. The Ordinance was also discussed at the December 14, 2020 City Council Study Session. The proposed amendments or repealing of language to the Auburn City Code are also subject to review by the Washington State Department of Commerce and subject to the State Environmental Policy Act and were transmitted to those agencies for review in October 2020.

Ordinance No. 6799 authorizes amendments or repealing of language in Titles 17 and 18 of the Auburn City Code as shown in Exhibits A through I of the Ordinance.

The City has received comment letters from 3 wireless communication industry representatives, some prior and subsequent to the Planning Commission hearing. City staff has replied and met with the commenters. Some comments relate to Title 20 and Ordinance No. 6798, others relate to Title 18 and Ordinance No. 6799. The City departments have evaluated these comments and believe the code changes as proposed by staff continue to be appropriate. One comment that has been repeated is that the city should not require the Federal Aviation Administration's (FAA's) approval of compatibility to the airport for new wireless communication facilities (primarily towers) that also takes into account future expansions as "eligible facility requests." Future compliance of the expansion would be addressed at the time of application to the city for the expansion. The city staff has evaluated revised code language for ACC 18.31.100(D)(4).

See Agenda Bills for Ordinance No. 6790, 6797, and 6798 for further information.

List Attachments: Ordinance No. 6799 and Exhibits A – I.

Reviewed by Council Ad Hoc Committees or Commissions:

Other:	
Meeting Date: City Council 12/21/2020	**Staff:** Gaub/Tate

ORDINANCE 6799
EXHIBIT A

17.14.080 Underground utilities.

A. Consistent with ~~ACC~~ Titles 12 and 13 ACC and the city's ~~design and construction standards~~Engineering Design and Construction Standards, all utility lines serving the subdivision, including but not limited to power, telephone and television cables, shall be installed underground. Adequate easements shall be provided for all such utility lines which will not be located within public ~~right-of-~~way. Television conduit and miscellaneous hardware shall be installed according to the requirements of Chapter ~~13.36~~20.06 ACC.

B. Whenever an intersection of an arterial and any other street is constructed or improved under the requirements of this title, and when the city engineer has determined that traffic signalization of such intersection will be needed in the future, the city engineer may require the installation, at the ~~subdivider's~~ applicant's expense, of underground conduit which will be necessary for and will facilitate such future signalization. (Ord. 6239 § 1, 2009; Ord. 5164 § 1, 1998; Ord. 4296 § 2, 1988. Formerly 17.12.240.)

ORDINANCE 6799
EXHIBIT B

Chapter 17.28
INFRASTRUCTURE CONDUIT

[Repealed]

~~Sections:~~

~~17.28.010 Infrastructure conduit in streets.~~

~~17.28.010 Infrastructure conduit in streets.~~

~~In addition to the other requirements set forth in this title, any time street improvements or right-of-way improvements are to be provided in connection with development activity governed hereby, the city review process shall determine in consultation with public works, police, parks, arts, and recreation, planning and development departments, information services, and with the local fire authority, whether conduit at least three inches in diameter should be included therein, in which cases, if so required, the applicant shall construct said improvement in conformance with the public facility extension requirements of Chapter 13.40 ACC. (Ord. 6414 § 3, 2012.)~~

ORDINANCE 6799
EXHIBIT C

18.02.040 Applicability.

A. The provisions of this title shall apply to both public and private use of land within the corporate limits of the city.

B. Hereafter, no use shall be conducted, and no building, structure and appurtenance shall be erected, relocated, remodeled, reconstructed, altered or enlarged unless in compliance with the provisions of this title, and then only after securing all permits and approvals required hereby. It shall be unlawful to build or use any building or structure or to use premises in the city for any purpose or use other than the uses listed as being permitted in the zone in which such building, land, or premises is located.

C. Any building, structure or use lawfully existing at the time of passage of this title, although not in compliance herewith, may continue as provided in Chapter 18.54 ACC.

D. No division of land shall occur unless in compliance with the provisions of this title and ~~ACC~~ Title 17 ACC, Land Adjustments and Divisions.

E. This title is not intended to regulate the public ways as defined in ACC 20.02.020.~~the erection, construction, or reconstruction of public streets, power poles, street lights, utility facilities, utility conveyance or storage systems, transmission lines, or other public uses necessary to support the general public welfare, carried on by the city, or agents of the city working under the appropriate contract or franchise.~~ (Ord. 6245 § 2, 2009; Ord. 5026 § 1, 1997; Ord. 4773 § 1, 1995; Ord. 4229 § 2, 1987. Formerly 18.02.030.)

ORDINANCE 6799
EXHIBIT D

18.04.912 Wireless communications - Definitions.

~~"Wireless communications" means the provision of any personal wireless service, as defined in the Telecommunications Act of 1996, and for the purposes of this title includes the following terms:~~

A. "Alternative Tower Structure" means man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole that that accommodates Small Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the concealment standards of this Code.

B. "Antenna" means any devise used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.~~a device used in wireless communications which transmits and/or receives radio signals. Antennas include the following types:~~

~~1. Accessory: Antennas including, but not limited to, test mobile antennas and Global Positioning System (GPS) antennas which are less than 12 inches in height or width and do not directly provide personal wireless communication.~~

~~2. Directional or panel: An antenna or array of antennas designed to transmit a radio signal in a particular direction typically encompassing an arc of 120~~

~~degrees. Panel antennas, also called directional antennas, are typically flat, rectangular devices approximately six square feet in size.~~

~~3. Dish or parabolic: A bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.~~

~~4. Whip, rod or omni-directional antenna: An antenna, tubular in shape, that transmits and receives signals throughout a 360-degree range.~~

~~5. Other: All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna defined herein which most closely resembles such equipment.~~

~~B. "Antenna array" means one or more rods, panels, discs or similar devices attached to a support structure used for the transmission or reception of radio frequency signals.~~

C. "Attached wireless communications facility ~~(WCF)~~" means a wireless communication facility that is affixed to an existing structure other than a Tower. Examples of attached wireless communication facilities include antennas affixed to or erected upon existing buildings, water tanks, or other existing structures or replacement structures (such as in the case of a replacement stadium/ballfield light pole or a parking lot light standard). ~~an antenna array which is attached to an existing building or structure.~~

D. "Base station" means the structure or equipment at a fixed location that enables wireless communications, licensed or authorized by the FCC, between user equipment and a communications network. By way of example, a building, ballfield structure or a utility pole, becomes a base station once wireless facilities are permitted and attached. The term does not encompass a wireless communication tower as defined in this title or any equipment associated with a wireless communication tower.

E. "Concealment", or "concealment design techniques" means that a wireless communication facility is concealed or utilizes concealment, when any measures are

used in the design and siting of wireless communication facilities intended to make the facility look like something other than a wireless tower or base station. For example, a wireless communication facility site utilizes concealment design techniques when it (1) is integrated in an outdoor fixture such as a flagpole, or (2) uses a design which mimics and is consistent with the nearby natural or architectural features (such as an artificial tree), or (3) is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) (such as a belvedere or a dormer), or replaces existing permitted facilities (including without limitation, freestanding light standards) so that the presence of the wireless communication facility is not readily apparent. The terms do not include fencing and landscape screening that is used to enhance visual compatibility at ground level.

F~~D~~. "Carrier" means a company providing wireless communication services, also referred to as a wireless service provider.

~~E~~G. "Co-location" means: (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, "Co-location" means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. ~~the use of a common WCF or site by two or more wireless license holders, or by one wireless license holder for more than one type of communications technology~~.

H. "Eligible facilities request" (EFR) means any request for modification of an existing wireless communication tower or base station that was previously authorized by the local permitting jurisdiction and that does not substantially change, as defined in this Section, the physical dimensions of such wireless communication tower or base station from the original authorization involving: (1) co-location of new transmission equipment, (2) removal of transmission equipment, or (3) replacement of transmission equipment.

I. "Eligible Support Structure" means an existing wireless communication tower or base station as defined in this title and that has proposed alterations that meet the standards of an eligible facilities request

~~F~~J. "Equipment facility" means a structure used to contain ancillary equipment for a WCF which may include cabinets, shelters, an addition to an existing structure, pedestals and other similar structures.

K. "Emergency wireless communication facility (EWCF)" means any structure not entirely within an enclosed building or vehicle, including antennas, guy wires, microwave dishes or horns, structures or towers to support receiving and/or transmitting devices, accessory buildings, i.e., equipment storage buildings, energy power generating housing, and the leased or owned property surrounding the wireless communication tower and any access or utility easements, that is used for the transmission or reception of electromagnetic waves for emergency communication purposes, operated by a local public agency responsible for providing emergency services

L. "Existing" means a constructed tower or base station if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

~~G~~M. "Microcells" are ~~typically located in and exclusively benefit residential neighborhoods. Microcells~~ Small Wireless Facilities consisting of an antenna that is either: (1) ~~a dish or parabolic antenna that is~~ no more than four feet in height and with an area of not more than five hundred eighty~~580~~ square inches; or (2) if a tubular antenna, ~~that is~~ no more than four inches in diameter and no more than six feet in height~~; or (3) one or more panel antennas that are no more than six feet in height, and their width or depth is no more than six inches and the aggregate area of such panel antenna(s) would not exceed 580 square inches that would be visible from any one viewpoint; or (4) similar antennas that are of comparable size and shape~~.

N. “Monopole” means a single, freestanding pole-type structure supporting one or more antennas.

~~H~~O. “Separation” means minimum distance required by city regulation between the base of Towers~~primary support structures~~.

P. “Site” for purposes of this chapter means for wireless communication towers other than wireless communication towers in the public way, the current boundaries of the leased or owned property surrounding the wireless communication tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to February 22, 2012 or otherwise outside of the Spectrum Act’s Section 6409(a) process.

Q. “Small wireless facilities” shall mean the definition contained in Chapter 20.14 ACC, including Microcells, and may be permitted either within or outside of the public way, in accordance with applicable law.

R. “Substantial change” for purposes of this chapter means a modification that alters the physical dimensions of an eligible support structure if, after the modification, the structure meets any of the following criteria:

1. For towers other than towers in the public way, it increases the height of the tower by more than ten percent or by the height of one additional antenna array with separation from the top of nearest existing antenna to the bottom of the new antenna, not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

2. For towers other than towers in the public way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the

tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site as that term is defined in this section except that, for towers other than towers in the public way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

5. It would defeat the concealment elements of the eligible support structure; or

6. It does not comply with conditions associated with the original approval of the construction or modification of the eligible support structure or base station equipment, unless noncompliance is only in a manner that would exceed the thresholds identified in subsections (1) through (4) of this definition.

For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure as it existed at the time the first Eligible Facilities Request was approved for that structure in cases where facilities are or will be separated horizontally, in other circumstances, changes in height are measured from the dimensions of the wireless communication tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

~~I~~S. "Support structure" means a structure designed to support WCFs including, but not limited to, towers, alternative tower structures, replacement poles, and other freestanding self-supporting pole structures.~~the structure to which the antenna and other necessary associated hardware are attached. Support structures include but are not limited to the following:~~

~~1. Lattice tower: A structure of varying height that consists of a network of crossed metal braces forming a tower which is usually triangular or square in cross section. To be considered a primary support structure.~~

~~2. Monopole: A structure of varying height consisting of a single spire sunk into the ground and/or attached to a foundation. To be considered a primary support structure.~~

~~3. Other structures: This may include existing buildings, water towers, athletic field light poles, or other similar structures. To be considered a secondary support structure.~~

T. "Toll" and "Tolling" means to delay, suspend or hold off on the imposition of a deadline, statute of limitations or time limit.

U. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

V. "Wireless communications" means the provision of any personal wireless service, as defined in the Telecommunications Act of 1996, as amended, or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

~~J~~W. “Wireless communications facility (WCF)” means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include an accessory wireless communications antenna, used for serving that building only and that is otherwise permitted under other provisions of the ACC. A WCF includes an antenna or antennas, including without limitation, direction, omni-directional and parabolic antennas, support equipment, alternative tower structures, and wireless communication towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios or telephones and their associated transmitting antennas, nor does it include other facilities specifically exempted from the coverage of this title~~any nonstaffed facility for the transmission and/or reception of wireless telecommunications services, typically consisting of an antenna array, an equipment facility and/or a support structure~~.

~~K. “Emergency wireless communication facility (EWCF)” means a wireless communications facility for the purpose of an emergency communication system operated by a local public agency responsible for providing emergency services.~~

(Ord. 6716 § 1 (Exh. A), 2019; Ord. 6245 § 3, 2009; Ord. 5777 § 1, 2003; Ord. 5645 § 1, 2002; Ord. 5020 § 1, 1997.)

ORDINANCE 6799
EXHIBIT E

18.07.020 Uses.

Table 18.07.020. Permitted Use Table – Residential Zones~~Zoning Designations~~

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
A. Residential Uses.							
Accessory dwelling units	P	P	P	P	X[1]	X[1]	X[1]
Accessory use, residential	P	P	P	P	P	P	P
Adult family home	P	P	P	P	P	P	P
Bed and breakfast	P	P	P	P	P	P	P
Communal residence four or less individuals	P	P	P	P	P	P	P
Duplexes; provided, that minimum lot size of zoning designation is met and subject to compliance with Chapter 18.25 ACC (Infill Residential Development Standards)	X	X	A	P	P	P	X
Foster care homes	P	P	P	P	P	P	P
Group residence facilities (7 or more residents)	X	X	X	X	C	C	C
Group residence facilities (6 or fewer residents)	P	P	P	P	P	P	P
Keeping of animals[4]	P[2]	P[2]	P[2]	P[2]	P[2]	P[2]	P[2]

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
Multiple-family dwellings	X	X	X	X	A	P	P
Neighborhood recreational buildings and facilities owned and managed by the neighborhood homeowners' association	A[6]	A[6]	A[6]	A[6]	A[6]	P	P
Use as dwelling units of (1) recreational vehicles that are not part of an approved recreational vehicle park, (2) boats, (3) automobiles, and (4) other vehicles	X	X	X	X	X	X	X
Renting of rooms, for lodging purposes only, to accommodate not more than two persons in addition to the family or owner occupied unit[8]	P	P	P	P	P	P	P
Residential care facilities including but not limited to assisted living facilities, convalescent homes, continuing care retirement facilities	P	P	X	X	A	P	P
Single-family detached dwellings, new	P	P	P	P	P	P	X
Supportive housing, subject to the provisions of ACC 18.31.160	X	X	X	X	X	P	P
Swimming pools, tennis courts and similar outdoor recreation uses only accessory to residential or park uses	P	P	P	P	P	P	P
Townhouses (attached)	X	X	X	X	P	P	P

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
B. Commercial Uses.							
Commercial horse riding and bridle trails	A	X	X	X	X	X	X
Commercial retail, included as part of mixed-use development and not a home occupation in compliance with Chapter 18.60 ACC	X	X	X	X	A	A	A
Daycare, limited to a mini daycare center. Daycare center, preschool or nursery school may also be permitted but must be located on an arterial	X	A	A	A	A	A	A
Home-based daycare as regulated by RCW 35.63.185 and through receipt of approved city business license	P	P	P	P	P	P	P
Home occupations subject to compliance with Chapter 18.60 ACC	P	P	P	P	P	P	P
Marijuana cooperative	X	X	X	X	X	X	X
Marijuana processor	X	X	X	X	X	X	X
Marijuana producer	X	X	X	X	X	X	X
Marijuana related business	X	X	X	X	X	X	X
Marijuana researcher	X	X	X	X	X	X	X
Marijuana retailer	X	X	X	X	X	X	X
Marijuana transporter business	X	X	X	X	X	X	X
Mixed-use development[3]	X	X	X	X	P	P	P

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
Nursing homes	X	X	X	X	C	C	C
Private country clubs and golf courses, excluding driving ranges	X	X	C	C	C	X	X
Privately owned and operated parks and playgrounds and not homeowners' association-owned recreational area	X	A	A	A	A	P	P
Professional offices, included as part of mixed-use development and not a home occupation in compliance with Chapter 18.60 ACC	X	X	X	X	A	A	A
C. Resource Uses.							
Agricultural enterprise:[7]							
When 50 percent, or more, of the total site area is dedicated to active agricultural production during the growing season, and with 52 or less special events per calendar year	A[7]	X	X	X	X	X	X
When less than 50 percent of the total site area is dedicated to active agricultural production during the growing season, or with more than 52 special events per calendar year	C[7]	X	X	X	X	X	X
Agricultural type uses are permitted provided they are incidental and secondary to the single-family use:							

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
Agricultural crops and open field growing (commercial)	P	X	X	X	X	X	X
Barns, silos and related structures	P	X	X	X	X	X	X
Commercial greenhouses	P	X	X	X	X	X	X
Pasturing and grazing[4]	P	X	X	X	X	X	X
Public and private stables[4]	P	X	X	X	X	X	X
Roadside stands, for the sale of agricultural products raised on the premises. The stand cannot exceed 300 square feet in area and must meet the applicable setback requirements	P	X	X	X	X	X	X
Fish hatcheries	C	X	X	X	X	X	X
D. Government, Institutional, and Utility Uses.							
Civic, social and fraternal clubs	X	X	X	X	A	A	A
Government facilities	A	A	A	A	A	A	A
Hospitals (except animal hospitals)	X	X	X	X	X	C	C
Municipal parks and playgrounds	A	P	P	P	P	P	P
Museums	X	X	X	X	A	A	A
Religious institutions, less than one acre lot size	A	A	A	A	A	A	A
Religious institutions, one acre or larger lot size	C	C	C	C	C	C	C
Transmitting towers	C	C	C	C	C	C	C

P = Permitted A = Administrative C = Conditional Use X = Not Permitted							
Land Uses	**Zoning Designations**						
	RC	**R-1**	**R-5**	**R-7**	**R-10**	**R-16**	**R-20**
Type 1-D wireless communication facility (see ACC 18.04.912(WJ) and ACC 18.31.100)	P	P	P	P	P	P	P
Eligible facilities request (EFR) (Wireless communication facility – See ACC 18.04.912(H))	P	P	P	P	P	P	P
Utility facilities and substations	C[5]	C[5]	C[5]	C[5]	C[5]	C[5]	C[5]
Small wireless facilities (ACC 18.04.912(Q))	P	P	P	P	P	P	P

1 An accessory dwelling unit may be permitted with an existing single-family residence pursuant to ACC 18.31.120.

2 Please see the supplemental development standards for animals in ACC 18.31.220.

3 Individual uses that make up a mixed-use development must be permitted within the zone. If a use making up part of a mixed-use development requires an administrative or conditional use permit, the individual use must apply for and receive the administrative or conditional use approval, as applicable.

4 Proximity of pasture or livestock roaming area to wells, surface waters, and aquifer recharge zones is regulated by the King or Pierce County board of health, and property owners shall comply with the provisions of the board of health code.

5 Excludes all public and private utility facilities addressed under ACC 18.02.040(E).

6 Administrative use permit not required when approved as part of a subdivision or binding site plan.

7 Agricultural enterprise uses are subject to supplemental development standards under ACC 18.31.210, Agricultural enterprises development standards.

8 An owner occupant that rents to more than two persons but no more than four persons is required to obtain a city of Auburn rental housing business license and shall meet the standards of the International Property Maintenance Code.

(Ord. 6642 § 4, 2017; Ord. 6600 § 9, 2016; Ord. 6565 § 2, 2015; Ord. 6560 § 9, 2015; Ord. 6477 § 8, 2013; Ord. 6369 § 2, 2011; Ord. 6363 § 3, 2011; Ord. 6269 § 3, 2009; Ord. 6245 § 5, 2009.)

ORDINANCE 6799
EXHIBIT F

18.23.030 Uses.

A. *General Permit Requirements.* Table 18.23.030 identifies the uses of land allowed in each commercial and industrial zone and the land use approval process required to establish each use.

B. *Requirements for Certain Specific Land Uses.* Where the last column in Table 18.23.030 ("Standards for Specific Land Uses") includes a reference to a code section number, the referenced section determines other requirements and standards applicable to the use regardless of whether it is permitted outright or requires an administrative or conditional use permit.

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

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									**P – Permitted** **C – Conditional** **A – Administrative** **X – Prohibited**
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
INDUSTRIAL, MANUFACTURING AND PROCESSING, WHOLESALING									
Building contractor, light	X	X	X	P	X	P	X	P	
Building contractor, heavy	X	X	X	X	X	A	X	P	

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Manufacturing, assembling and packaging – Light intensity	X	X	X	P	X	P	P	P	ACC 18.31.180
Manufacturing, assembling and packaging – Medium intensity	X	X	X	A	X	P	A	P	ACC 18.31.180
Manufacturing, assembling and packaging – Heavy intensity	X	X	X	X	X	X	X	A	ACC 18.31.180
Marijuana processor	X	X	X	X	X	C	C	C	Chapter 18.59 ACC
Marijuana producer	X	X	X	X	X	C	C	C	Chapter 18.59 ACC
Marijuana researcher	X	X	X	X	X	C	C	C	Chapter 18.59 ACC
Marijuana retailer	X	X	X	C	X	C	C	C	Chapter 18.59 ACC
Marijuana transporter business	X	X	X	X	X	C	C	C	Chapter 18.59 ACC
Outdoor storage, incidental to principal	X	X	X	P	X	P	P	P	ACC 18.57.020(A)

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
permitted use on property									
Storage – Personal household storage facility (mini-storage)	X	P	X	P	X	P	X	P	ACC 18.57.020(B)
Warehousing and distribution	X	X	X	X	X	P	P	C	ACC 18.57.020(C)
Warehousing and distribution, bonded and located within a designated foreign trade zone	X	X	X	P	X	P	P	P	
Wholesaling with on-site retail as an incidental use (coffee, bakery, e.g.)	X	X	X	P	X	P	P	P	
RECREATION, EDUCATION AND PUBLIC ASSEMBLY USES									
Commercial recreation facility, indoor	X	P	P	P	P	P	P	A	
Commercial recreation facility, outdoor	X	X	X	A	A	P	A	A	ACC 18.57.025(A)

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Conference/convention facility	X	X	A	A	X	A	X	X	
Library, museum	X	A	A	A	X	A	P	X	
Meeting facility, public or private	A	P	P	P	X	A	P	A	
Movie theater, except drive-in	X	P	P	P	P	X	X	X	
Private school – Specialized education/training (for profit)	A	A	P	P	P	P	P	P	
Religious institutions, lot size less than one acre	A	P	P	P	A	A	A	A	
Religious institutions, lot size more than one acre	C	P	P	P	A	A	A	A	
Sexually oriented businesses	X	X	X	P	X	P	X	P	Chapter 18.74 ACC

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Sports and entertainment assembly facility	X	X	A	A	X	A	X	A	
Studio – Art, dance, martial arts, music, etc.	P	P	P	P	P	P	A	A	
RESIDENTIAL									
Caretaker apartment	X	P	P	P	X	P	P	P	
Live/work unit	X	X	P	P	P	P	P	X	
Work/live unit	X	P	P	P	P	P	P	X	
Marijuana cooperative	X	X	X	X	X	X	X	X	
Multiple-family dwellings as part of a mixed-use development[2]	X	X	P	P	P	P	P	X	ACC 18.57.030
Multiple-family dwellings, stand-alone	X	X	X	X	X	X	X	X	
Nursing home, assisted living facility	X	P	P	P	C	X	X	X	
Senior housing[2]	X	X	A	A	X	X	X	X	
RETAIL									

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Building and landscape materials sales	X	X	X	P	X	P	X	P	ACC 18.57.035(A)
Construction and heavy equipment sales and rental	X	X	X	X	X	A	X	P	
Convenience store	A	A	P	P	X	P	P	P	
Drive-through espresso stands	A	A	A	P	A	P	A	A	
Drive-through facility, including banks and restaurants	A	A	A	P	P	P	X	P	ACC 18.52.040
Entertainment, commercial	X	A	P	P	X	A	X	A	
Groceries, specialty food stores	P	P	P	P	P	P	P	X	ACC 18.57.035(B)
Nursery	X	X	X	P	A	P	X	P	ACC 18.57.035(C)
Outdoor displays and sales associated with a permitted use	P	P	P	P	P	P	P	P	ACC 18.57.035(D)

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
(auto/vehicle sales not included in this category)									
Restaurant, cafe, coffee shop	P	P	P	P	P	P	P	P	
Retail									
Community retail establishment	A	P	P	P	P	P	X	P	
Neighborhood retail establishment	P	P	P	P	P	P	X	P	
Regional retail establishment	X	X	X	P	P	P	X	A	
Tasting room	P	P	P	P	P	P	P	P	
Tavern	P	P	X	P	P	P	X	A	
Wine production facility, small craft distillery, small craft brewery	A	P	P	P	P	P	P	P	
SERVICES									

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Animal daycare (excluding kennels and animal boarding)	A	A	A	P	A	P	X	P	ACC 18.57.040(A)
Animal sales and services (excluding kennels and veterinary clinics)	P	P	P	P	P	P	X	P	ACC 18.57.040(B)
Banking and related financial institutions, excluding drive-through facilities	P	P	P	P	P	P	P	P	
Catering service	P	P	P	P	A	P	A	P	
Daycare, including mini daycare, daycare center, preschools or nursery schools	A	P	P	P	P	P	P	X	
Dry cleaning and laundry service (personal)	P	P	P	P	P	P	P	P	
Equipment rental and leasing	X	X	X	P	X	P	X	P	

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Kennel, animal boarding	X	X	X	A	X	A	X	A	ACC 18.57.040(C)
Government facilities; this excludes offices and related uses that are permitted outright	A	A	A	A	A	A	A	A	
Hospital	X	P	P	P	X	P	X	P	
Lodging – Hotel or motel	X	P	P	P	P	A	P	A	
Medical – Dental clinic	P	P	P	P	P	P	X	X	
Mortuary, funeral home, crematorium	A	P	X	P	X	P	X	X	
Personal service shops	P	P	P	P	P	P	X	X	
Pharmacies	P	P	P	P	P	X	X	X	
Print and copy shop	P	P	P	P	P	P	X	X	
Printing and publishing (of books, newspaper and other printed matter)	X	A	P	P	P	P	P	P	

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Professional offices	P	P	P	P	P	P	P	P	
Repair service – Equipment, appliances	X	A	P	P	P	P	X	P	ACC 18.57.040(D)
Veterinary clinic, animal hospital	A	P	P	P	P	P	X	X	
Youth community support facility	X	P	X	X	X	X	X	X	ACC 18.57.040(E)
TRANSPORTATION, COMMUNICATIONS AND INFRASTRUCTURE									
Ambulance, taxi, and specialized transportation facility	X	X	X	A	X	P	X	P	
Broadcasting studio	X	P	X	P	X	P	X	P	
Heliport	X	X	X	C	X	C	X	C	
Motor freight terminal[1]	X	X	X	X	X	X	X	X	See Footnote No. 1
Parking facility, public or commercial, surface	X	P	P	P	P	P	P	X	
Parking facility, public or commercial, structured	X	P	P	P	P	P	P	X	
Towing storage yard	X	X	X	X	X	A	X	P	ACC 18.57.045(A)

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Utility transmission or distribution line or substation	A	A	A	A	A	A	A	A	
Wireless communication facility (WCF) (See ACC 18.04.912(W)	–*	–*	–*	–*	–*	–*	–*	–*	~~ACC 18.04.912,~~ *See ACC 18.31.100 for use regulations and zoning development standards.
Eligible facilities request (EFR) (Wireless communication facility (See ACC 18.04.912(H))	P	P	P	P	P	P	P	P	
Small wireless facilities (ACC 18.04.912(Q))	P	P	P	P	P	P	P	P	
VEHICLE SALES AND SERVICES									

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Automobile washes (automatic, full or self-service)	X	A	X	P	P	P	X	P	ACC 18.57.050(A)
Auto parts sales with installation services	X	A	A	P	P	P	X	P	
Auto/vehicle sales and rental	X	A	X	P	X	P	X	P	ACC 18.57.050(B)
Fueling station	X	A	A	P	P	P	X	P	ACC 18.57.050(C)
Mobile home, boat, or RV sales	X	X	X	P	X	P	X	P	
Vehicle services – Repair/body work	X	X	A	P	X	P	X	P	ACC 18.57.050(D)
OTHER									
Any commercial use abutting a residential zone which has hours of operation outside of the following: Sunday: 9:00 a.m. to 10:00 p.m. or Monday – Saturday: 7:00 a.m. to 10:00 p.m.	A	A	A	A	A	A	A	A	

PERMITTED, ADMINISTRATIVE, CONDITIONAL AND PROHIBITED USES BY ZONE									P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designation**								**Standards for Specific Land Uses**
	C-N	**C-1**	**C-2**	**C-3**	**C-4**	**M-1**	**EP**	**M-2**	
Other uses may be permitted by the planning director or designee if the use is determined to be consistent with the intent of the zone and is of the same general character of the uses permitted. See ACC 18.02.120(C)(6), Unclassified Uses.	P	P	P	P	P	P	P	P	

1 Any motor freight terminal, as defined by ACC 18.04.635, in existence as of the effective date of the ordinance codified in this section, is an outright permitted use in the M-1 and M-2 zones. Any maintenance, alterations and additions to an existing motor freight terminal which are consistent with ACC 18.23.040, Development standards, are allowed.

2 Any mixed-use development or senior housing project vested prior to Resolution No. 5187 (December 7, 2015) is an outright permitted use in the C-1 zone. Subsequently, if a nonresidential use within a vested mixed-use development changes, then the nonresidential use shall maintain a minimum of 10 percent of the cumulative building ground floor square footage consisting of the uses permitted

outright, administratively, or conditionally, listed under “Recreation, Education, and Public Assembly,” “Retail,” or “Services” of the C-1 zone.

(Ord. 6728 § 3 (Exh. C), 2019; Ord. 6688 § 1 (Exh. 1), 2018; Ord. 6644 § 2, 2017; Ord. 6642 § 9, 2017; Ord. 6508 § 1, 2014; Ord. 6433 § 26, 2012.)

ORDINANCE 6799
EXHIBIT G

18.31.100 Wireless communications facilities siting standards.

The following siting standards are intended to guide the location and development of wireless communications facilities (WCF as defined by ACC 18.04.912(W)) ~~but not including microcells)~~ on properties regulated under this title. The siting of ~~microcells~~ small wireless facilities shall also be in accordance with ~~siting of microcells found in~~ ACC 18.31.110.

A. *Types of Wireless Communication Facilities (WCFs).* For the purposes of determining in which zones wireless communications facilities are to be permitted, and which land use approval process applies, they will be classified pursuant to the following types. Refer to the table in subsection L of this section to determine which zones allow for the following types of facilities:

1. *Type 1.* Type 1 ~~are new antennas erected on existing buildings or nonresidential structures.~~ is a new wireless communication facility (WCF) that is affixed to an existing structure other than a "wireless communication support structure" (also known as, an "Attached wireless communication facility"). Examples of attached wireless communications facilities include antennas affixed to or erected upon existing buildings, water tanks, or other existing structures. There are four separate Type 1 categories described as follows:

   a. 1-A. The combined height of the ~~antenna~~ WCF together with the height of the existing ~~building~~ structure cannot be 25 percent greater than the existing ~~building~~ structure or exceed the height limitation of the zone in which the ~~building~~ structure is located.

   b. 1-B. The combined height of the ~~antenna~~ WCF together with the height of the existing ~~building~~ structure cannot be 50 percent greater than the existing ~~building~~ structure or exceed the height limitation of the zone in which the ~~building~~ structure is located.

c. 1-C. The combined height of the ~~antenna~~ WCF together with the height of the existing ~~building~~ structure is 50 percent greater than the existing ~~building~~ structure or exceeds the height limitation of the zone in which the ~~building~~ structure is located. The height limitation of the zone can only be exceeded by 25 percent.

d. 1-D. ~~Antenna~~ The WCF is located on an existing non-habitable structure such as a water tower~~s~~, athletic field light pole~~s~~, or similar public utility infrastructure not located within a public ~~street right-of-~~way or that is located on an existing non-residential structure such as a fire station, school, church or other similar type of institutional use whose site does not contain dwellings. The height limitation of the WCF will be 10 percent of the existing structure height, but may be increased to a maximum of 20 percent with an administrative use permit and may be increased to a maximum of 30 percent with a conditional use permit. The height limitation of the zone may be exceeded relative to the above provisions allowed for a 1-D facility.

Any increases in height above the limits of the zoning district, as permitted for Type1 facilities must include concealment techniques approved by the city.

2. *Type 2.* Type 2 are new ~~antennas~~ equipment erected on existing ~~(primary) support structures~~towers that have previous ~~city~~ approvals. There are two separate Type 2 categories described as follows:

a. 2-A. Any request for modification of an existing wireless communication tower or base station that was previously authorized by the local permitting jurisdiction and that would exceed a “Substantial change”, and the combined height of the WCF and structure cannot be 20 percent greater than the existing structure and ~~Must meet height requirements of previous approval and~~ is limited to 50 percent total (cumulative) expansion of equipment area.

b. 2-B. Any request for modification of an existing wireless communication tower or base station that was previously authorized by the local permitting jurisdiction and that that would exceed a “Substantial change”, and the combined height of the WCF and structure cannot be 50 percent greater than

the existing structure and allow for more than 50 percent (cumulative) expansion of equipment area.~~Has greater height requirements than previous approval and allows for more than a 50 percent expansion of the equipment area.~~

Any increases in height above the limits of a particular zone, as permitted for Type 2 facilities must include concealment techniques approved by the city.

3. *Type 3.* Type 3 is the erection of a new ~~(primary) support structures~~ "Tower". There are three separate Type 3 categories described as follows:

a. 3-A. ~~Monopoles~~ "Towers" that are 75 feet or less in height.

b. 3-B. ~~Monopoles~~ "Towers" that are more than 75 feet in height or lattice towers of any height.

c. 3-C. ~~Monopoles or lattice towers~~ "Towers" that meet the definition of an ~~EWCF~~ Emergency wireless communication facility (EWCF) and are 185 feet or less in ~~structure~~ height.

~~4. *Type 4.* Type 4 are new antennas erected on existing EWCF (primary) support structures that have previous city approvals. There is one Type 4 category, which is described as follows:~~

~~a. 4-A. Mounting of antennas cannot exceed the following thresholds:1~~

~~i. Increase the height of an existing primary support structure by 10 percent, or 20 feet (whichever is less).~~

~~ii. Add an appurtenance to the body of the tower that would protrude from the outside edge of the tower more than 20 feet.~~

~~iii. Install more than four ancillary equipment facilities.~~

~~1 This section is intended to be interpreted consistent with 47 CFR 1.40001, as amended.~~

B. *Separation between Facilities.*

1. *New, Freestanding ~~Primary Support Structures~~Towers.*

a. The minimum separation, i.e., distance, between a proposed ~~monopole~~ tower (that is 75 feet or less in height) and any other existing ~~primary support structure~~tower, of any height, shall be the height of the proposed ~~monopole~~tower, including antenna, multiplied by a factor of 10.

b. The minimum separation, i.e., distance, between a proposed ~~monopole~~ tower (that is more than 75 feet in height, or lattice towers of any height) and any other existing ~~primary support structure~~tower, of any height, shall be the height of the proposed ~~monopole~~tower, including antenna, multiplied by a factor of 20.

c. The Community Development director may exempt an applicant from these separation requirements if (1) the applicant demonstrates to the city's satisfaction that despite diligent efforts, other options are neither available to lease nor technologically feasible to address a service provider's demonstrated gap in coverage or demonstrated lack of system capacity. Documentation regarding inability to lease shall include names and addresses of owners contacted, date of contact, method of contact and owner response, and failure to approve the exemption would be an effective prohibition of the applicant being able to provide wireless communications, or (2) the director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and, the height of existing structures in the vicinity, that placement of a tower at a distance less than the minimum separation from another tower will reduce visibility and reduce visual clutter to a greater extent.

2. The distance between ~~primary support structures~~towers shall be measured by following a straight line, without regard to intervening buildings, from the base of one ~~support structure~~tower to the base of the other ~~support structure~~tower(s).

3. A ~~primary support structure~~tower would be considered "existing" if it was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was built. For example, a tower that exists as a

legal, non-conforming use and was lawfully constructed is existing. It shall be the applicant's responsibility to provide evidence of lawful construction. Subsequent city permitted modifications of a tower that qualify as an Eligible Facilities Request and do not amount to a "Substantial Change", do not make an existing tower non-conforming.~~a conditional use permit or administrative use permit has been issued and is still valid for sites which have not been built upon.~~

C. *Co-Location Requirements.*

1. For ~~monopoles~~ towers that are more than 75 feet in height and lattice towers of any height ~~(Type 3-B facilities)~~, the owner of the ~~property~~ tower shall execute and provide evidence of a nonexclusive lease with the ~~carrier~~ underlying property owner, if the property owner is different, that allows for other carriers to place antennas and equipment on the structure unless specific approval not to is provided in accordance with subsection. 3 below..

2. Any application for a Type 3-B or 3-C ~~facility~~ Towers that are more than 75 feet in height or lattice towers of any height or tower shall include technical, environmental, or regulatory justification that an existing ~~Type 3-B or 3-C facility~~WCF with a nonexclusive lease could not be used instead of constructing a new tower.

3. Towers shall be designed and constructed to allow the tower to accommodate WCFs from at least two (2) carriers on the same tower; one in addition to the original. No property owner or carrier shall unreasonably exclude another carrier from using the same facility or location. Design and construction for co-location shall not be required when it would materially compromise the camouflage design intent of the tower, or when, in the reasonable discretion of the Community Development director, such construction is not technically feasible based upon construction, engineering and design standards of the industry, or based upon evidence provided, a tower designed for co-location will not be commercially viable. An applicant, owner, or operator seeking Community Development director approval to waive the co-location requirements described

herein shall provide evidence explaining why co-location is not possible at a particular tower.

D. *Height.*

1. Unless otherwise provided for, the height of any ~~primary support structure and/or antenna~~tower with appurtenances shall not exceed the height limitations of the zone.

2. The maximum height of any ~~primary support structure~~tower shall not exceed 120 feet except as an eligible facility request.

3. There shall be no variances allowed to the height limitations.

4. The ~~carrier~~ applicant shall provide evidence that the Federal Aviation Administration (FAA) has approved the location ~~of a primary support structure~~and any future increases in height or other modifications that would otherwise be permissible as an eligible facilities request (EFR) for any tower relative to the Auburn Municipal Airport.

5. Unless otherwise restricted by this section, building- or structure-mounted antennas may extend a maximum of 15 feet above the maximum height permitted for structures within the zone.

6. Antennas that are mounted on structures that do not otherwise have a height restriction may be allowed to increase the overall height of the structure by no more than 10 percent of the height of the structure unless additional approvals are obtained.

E. *Setbacks.*

1. All equipment shelters, cabinets, support structures or other above-ground facilities shall meet the setback requirements of the zone in which located except as follows. All equipment shelters, cabinets, or other above-ground facilities used to support ~~primary support structures~~WCFs shall be set back the same distance required of the ~~primary support structure~~WCF except as an eligible facility

request. All equipment shelters, cabinets, or other above-ground facilities within a nonresidential zone shall be set back a minimum of 50 feet from any adjacent ~~R~~ residential zone except as an eligible facility request.

2. The minimum distance from any ~~primary support structure~~tower, of any height, to any residentially zoned parcel of property, including mixed use zones that include residential uses shall be a distance equal to the overall height of the ~~primary support structure~~tower (including antennas) multiplied by a factor of two.

3. Where ~~possible~~technically feasible, roof-mounted antennas and equipment shelters and/or cabinets are to be placed towards the center of the building, or away from public views. Equipment shelters and/or cabinets shall be screened by a parapet or similar architectural feature.

F. *Fencing and Landscaping.*

1. *Fencing.* Fencing is required to enclose all above-ground support equipment that is associated with ~~primary support structures~~towers. Fencing will be 100 percent sight-obscuring, as defined in ACC 18.31.020(C)(2), if visible from a public ~~right-of-~~way or from a less intense zone. Equipment shelters and/or cabinets shall be enclosed by fencing a minimum of six feet in height. Fencing shall meet the sight distance requirements of the city ~~design and construction standards~~Engineering Design and Construction Standards.

2. *Landscaping.*

a. Where above-ground support equipment is visible from a public ~~right-of-~~way, a minimum width of five feet of ~~Type II~~ landscaping ~~as defined in ACC 18.50.040~~ will be provided on the exterior of the enclosing fence in order to effectively screen the equipment from the public ~~right-of-~~way. The landscaping shall consist of evergreen and deciduous trees with no more than 50 percent being deciduous, and shrubs and groundcover shall be provided. Landscaping shall meet the sight distance requirements of the city ~~design and construction standards~~Engineering Design and Construction Standards.

b. Where facilities are visible from adjacent residential or mixed use zoning districts~~uses~~, a minimum width of five feet of ~~Type I~~ landscaping ~~as defined in ACC 18.50.040~~ will be provided on the exterior of the enclosing fence in order to effectively screen the equipment from the adjacent residential uses. The landscaping shall consist of evergreen trees or tall shrubs, a minimum of six feet in height at planting which will provide a 100 percent sight-obscuring screen within three years from the time of planting; or a combination of evergreen and deciduous trees with no more than 30% being deciduous, backed with a 100 percent sight-obscuring fence, as defined in ACC 18.31.020(C)(2), with shrubs and groundcover provided.

c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. Existing on-site vegetation may be used to meet the landscape requirements if approved by the ~~planning~~ Community Development director.

G. *Aesthetics.*

1. Concealment Design Techniques. All WCFs and any transmission equipment shall, to the extent technically feasible, use concealment design techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the components of the WCF and the WCF to the surrounding natural setting and/or built environment. Design, materials, and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located on the site and parcel and on adjacent parcels.

a. At a minimum, all tower-mounted WCF equipment shall be colored to match the tower color.

b. Concealment design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures and/or natural or community features). Should the Community Development director determine that WCFs are located adjacent to or viewable from impression corridors as defined by the Comprehensive

Plan, they shall (where possible) be designed (including but not limited to placement underground, depressed, or located behind earth berms) to minimize aesthetic impacts at the request of the Community Development director.

c. The concealment design may include the use of alternative tower structures should the Community Development director determine that such design meets the intent of this section and the community is better served.

d. All WCFs, shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only).

2~~1~~. In order to minimize any potential negative aesthetic impacts from new ~~primary support structures~~WCFs including protecting views to and from residential neighborhoods, mitigation may be required to blend the facilities in with the adjacent ~~development or environs~~natural setting and/or built environment. Typical solutions for ~~the support structure~~ concealment design might include: an extension of the building, a component of a sign structure, disguising the facility as a tree, planting of tall trees, moving the location of the facility, painting or texturing the facility, etc.

WCFs shall be additionally sited in a manner that is sensitive to the proximity of the facility to residential structures. When placed near a residential or mixed use zoned property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential or mixed use zoned properties, or on the corner formed by two intersecting streets. If these requirements are not reasonably feasible from a construction, engineering, or design perspective, the applicant may submit a written statement to the Community Development director requesting the WCF be exempt from these requirements using the procedure for an administrative waiver elsewhere is this chapter.

32. Building- or roof-mounted antennas will be painted or textured to blend with the adjacent surfaces.

43. No lettering, symbols, images or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent street shall be placed on or affixed to any part of the WCF, unless required by the FCC or FAA.

54. Except as specifically required by the FAA (but must be approved by the city), freestanding ~~primary support structures~~towers shall be painted a color that best allows them to blend into the surroundings. The use of grays, blues and greens might be appropriate; however, each application shall be evaluated individually.

6. Concealment Design Standards for Accessory Equipment and Transmission Equipment. Accessory equipment and transmission equipment for all WCFs shall meet the following requirements:

a. All transmission equipment and accessory equipment shall be grouped as closely together as technically possible.

b. Transmission equipment and accessory equipment shall be located out of sight whenever possible by locating within equipment enclosures. Where such alternate locations are not available, the transmission equipment and accessory equipment shall be concealed.

c. Transmission equipment and accessory equipment shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure or uses other concealment design techniques so as to make the equipment as visually unobtrusive as possible, including, for example, painting the equipment to match the structure.

7. Administrative Waiver.

a. An administrative waiver of any of the above concealment design standards may be requested of the Community Development director by filing a written application form provided by the city and payment of an application fee. The application will be evaluated for, and must demonstrate conformance with the following waiver criteria, for approval:

i. The concealment design standard prohibits or has the effect of prohibiting the provision of wireless communication service through the proposed WCF at the location because the standard will not allow the technology to function at that location; and

ii. The applicant demonstrates to the City's satisfaction that despite diligent efforts, other options are neither available to lease nor technologically feasible to address a service provider's demonstrated gap in coverage or demonstrated lack of system capacity. Documentation regarding inability to lease shall include manes and addresses of owners contacted, date of contact, method of contact and owner response; and

iii. The proposal for varying from the design standard represents a reasonable and best approximation of achieving the same objective as the specific standard sought to be waived; and

iv. The proposed alternative does not and will not conflict with public health, safety, or welfare.

b. If any concealment design standard is approved for waiver, the WCF proposed shall nevertheless meet all other applicable design standards not approved for waiver.

c. If a waiver request is denied for failure to meet any of the criteria specified above and there is no alternative for installation of the WCF at the particular location in a manner that meets the applicable design standards, then such application for the WCF for such specific location shall be denied

H. *Lighting.*

1. Freestanding support structures shall not be artificially lighted, unless required by the FAA or other applicable authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes on property located outside of the public way. If lighting is required, the City may review lighting alternatives and approve the design that would cause the least illumination disturbance to the surrounding views. Any proposed lighting shall, at a minimum, comply with the standards of Chapter 18.55 ACC, (Outdoor Lighting) and shall be submitted at the time of the initial application. Any lighting must be reviewed and approved by the city.

2. Security lighting used to light the equipment facility shall be directed downward, shielded and kept within the boundaries of the site.

I. *Abandoned Facilities.*

1. Any WCF which is not utilized for a period of nine months or more will be considered abandoned.

2. Any WCF which falls into a state of disrepair as determined by the Community Development ~~planning~~ director will be considered abandoned.

3. Any WCF considered to be abandoned must be removed completely within 90 days from the date of notification by the city to the owner, owner's agent and/or the operator of the WCF, based upon the contact information that has previously been provided to the city~~'s code enforcement personnel~~. The city~~code enforcement personnel~~ may extend the 90-day period should a valid application for use of the facility be submitted to the city. The owner of such WCF shall remove the same within ninety (90) days of receipt of written notice from the city. If such WCF is not removed within ninety (90) days, the city may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

J. *Noise.* For the purposes of this section, WCF will be considered a Class B, commercial, noise source pursuant to WAC 173-60-040.

K. *Supplemental Information Required for Applications.* In addition to the information that is otherwise required for an application for a permit for a WCF, the following is also required:

1. For all new WCFs~~a new primary support structure and related equipment~~, the applicant shall provide the carrier's master network plan for the city showing the carrier's existing WCF locations and narrative explaining the potential WCF locations over the next year, if known. The applicant shall also provide technical justification supporting the need for the height of the WCF and for any new tower~~primary support structure~~ and why a shorter support structure could not be utilized. Any application for a ~~Type 3-B facility~~ new tower greater than 75 feet in height shall provide technical justification as to why a ~~Type 3-A facility~~ tower of 75 feet or less in height could not be utilized instead to adequately serve the Auburn community.

2. Narrative description of the facility including whether there is capacity on the proposed structure for more antennas~~, methods for minimizing visual impacts of the facilities, etc~~. The applicant shall provide evidence of the ability to execute a non-exclusive lease between the carrier and the underlying property owner, if the property owner is different, that allows for other carriers to place antennas and equipment on the structure. This ability for co-location must be demonstrated, unless relief from this requirement is requested and ultimately approved in accordance with the provisions in this Chapter.

3. A color ~~swatch~~ sample for the proposed ~~primary support structure~~tower.

4. Narrative description of proposed concealment design techniques intended to make the facility look like something other than a tower or base station. Photographs, photo simulations, or similar illustrations that show a reasonable likeness of the proposed facility including the antennas ~~arrays~~ and above-ground support equipment.

L. *Zones in Which WCF Are Permitted.* The following table illustrates which zones the types of facilities as defined by ACC 18.04.912(~~J~~K) and (W~~K~~) and ACC 18.31.100(A) are allowed in and which land use approval process, if any is ~~permits are~~ required. Microcells, as defined by ACC 18.04.912(~~G~~M) (not located in public ways), are allowed only in residential zones and shall be permitted outright pursuant to the provisions of ACC 18.04.912(~~G~~M).

	Type of Permit Required		
Zone	**Permitted Outright**	**Administrative Use Permit**	**Conditional Use Permit**
All Zones	1-D	1-D[1]	1-D[2]
RO RO-H	1-A	1-B	1-C
C-N	1-A	1-B	1-C
C-1	1-A	1-B	1-C
C-2, DUC	1-A	1-B	1-C
C-3 C-4	1-B, 2-A	1-C, 2-B, 3-A	3-B
M-1, EP	1-B, 2-A	1-C, 2-B, 3-A	3-B
M-2	1-B, 2-A	1-C, 2-B, 3-A	3-B
P-1	1-B, 2-A	1-C, 2-B	3-A[3]
I	1-A	1-B	1-C
LF	1-A	1-B	1-C

1 Allowance for the WCF to extend to a height of 20 percent of the supporting structure.

2 Allowance for the WCF to extend to a height of 30 percent of the supporting structure.

3 The maximum height allowed, including antennas, is 45 feet.

M. *Exemptions.*

1. Unless otherwise provided for, the Mobile Testing Facilities/Equipment used to test network limitations~~following~~ are exempt from the provisions of this section.~~:~~

~~a. Microcells as defined by ACC 18.04.912(G).~~

~~b. *Mobile Testing Facilities/Equipment Used to Test Network Limitations.*~~ The facilities/equipment shall not be at any one location for more than 14 days and shall otherwise meet the requirements of any other ordinance, regulation or code provision.

2. EWCFs are exempt from the provisions of subsections B, Separation between Facilities; (C)(1), Co-Location Requirements; D, Height (except (D)(4)); and E, Setbacks, of this section. (Ord. 6716 § 1 (Exh. A), 2019; Ord. 6245 § 15, 2009.)

N. Eligible Facilities Requests (EFR)

1. Application and Review Requirement for Eligible Facilities Requests. Applicants seeking approval of eligible facility requests must complete an application form furnished by the city and comply with any requirements set forth in applicable city ordinances. The application form shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification or co-location. Such information may include, without limitation, whether the project:

a. Would result in a substantial change, as defined in ACC 18.04.912(R);

b. Violates a generally applicable law, regulations, or other rule codifying objective standards reasonably related to public health, safety, and welfare.

2. Review Procedures for Eligible Facilities Requests. This section applies to any eligible facilities requests for co-location on, or modification to an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

a. Review Required for Eligible Facilities. No co-location or modification to any existing tower or base station may occur except after a written request from an applicant is reviewed and approved by the director. Upon receipt of an application for an eligible facilities request pursuant to this section, the city shall review such application to determine whether the application so qualifies.

b Review Criteria. Upon receipt of an application for an eligible facilities request pursuant to this section, the city shall administratively review such application to determine whether the application meets the following criteria for an eligible facilities request:

i. Does not result in a substantial change, as defined in ACC 18.04.912(R);

ii. Does not violate a generally applicable law, regulation, or other rule reasonably related to public health, safety, and welfare and complies with generally applicable building, structural, electrical, and safety codes;

iii. Complies with the original application concealment design techniques or conditions of approval, including but not limited to colors, textures, surfaces, scale, character, and siting, or any approved amendments thereto, subject to the thresholds established in the definition of substantial change; and

3. Timeframe for Reviewing and Deciding Eligible Facilities Requests. Subject to the tolling provisions below, within sixty (60) days of the date on which an applicant submits a complete application, as determined by the director, the city shall approve the application unless it determines that the application does not qualify as an "eligible facility request", or does not comply with other applicable code requirements.

a. Tolling of the Timeframe for Review. The 60-day review period deadline begins to run when the application is filed and may be tolled (halted) only by mutual agreement of the city and the applicant, or in cases where the director determines that the application is "incomplete".

b. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;

c. The timeframe for review continues running again the following business day after the applicant makes a supplemental written submission in response to the city's notice of incompleteness; and

d. Following a supplemental submission, the city will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified above in (a) and (b). In the case of a second or subsequent notice of incompleteness, the city may not specify missing information or documents that were not delineated in the original notice of incompleteness.

4. Interaction with Telecommunications Act Section 332(c)(7). If the city determines that the applicant's request is not an eligible facilities request as delineated in this section of the Code, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order in WT Docket No. 08-165 (Adopted November 18, 2009), will begin to run from the

issuance of the city's decision that the application is not a covered request. To the extent such information is necessary, the city may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

ORDINANCE 6799
EXHIBIT H

18.31.110 Siting of ~~microcells~~small wireless facilities.

The following siting standards are intended to guide the location and development of ~~microcells~~ small wireless facilities as defined by ACC 18.04.912(Q) but not including other wireless communications facilities (WCF). The siting of other wireless communications facilities shall be in accordance with siting of wireless communication facilities found in ACC 18.31.100.

A. Siting Criteria for ~~Microcells~~small wireless facilities (not located in public ways).

1. Panel antennas shall be incorporated into the design of the existing structure using painting, flush mounting or other concealment methods.

2. The equipment cabinets and other ground support equipment shall be located in an area that is no larger than ~~16 square~~17 cubic feet in volume, except that the following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecom demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. The height of the equipment shall be no more than four feet. The equipment shall be designed to be compatible with the residential neighborhood the project shall provide a minimum width of five feet of ~~Type II~~ landscaping ~~as defined in ACC 18.50.040~~ or fencing or a combination of these or similar features. The landscaping shall consist of evergreen and deciduous trees with no more than 50 percent being deciduous, and shrubs and groundcover shall be provided.

3. There shall be a 300-foot separation between any ~~microcells~~small wireless facilities used by the same carrier.

~~4. The antennas must be located on light poles, power poles or similar public utility poles that are either owned/operated by the city of Auburn or owned/operated by a utility provider operating with an appropriate franchise if approved by the city engineer. The equipment cabinets may be located on private property.~~

~~5~~4. Anyone wishing to establish a ~~microcell~~ small wireless facility or associated components shall make application to the community development~~planning~~ director upon application forms provided by the ~~planning~~ director. The ~~planning~~ director shall review each application and may be empowered to approve, deny or modify the proposal. (Ord. 6245 § 15, 2009.)

ORDINANCE 6799
EXHIBIT I

18.35.030 Uses.

A. *General Permit Requirements.* Table 18.35.030 identifies the uses of land allowed in each special purpose zone and the planning permit required to establish each use.

B. *Requirements for Certain Specific Land Uses.* Where the last column in Table 18.35.030 ("Standards for Specific Land Uses") includes a section number, the referenced section determines other requirements and standards applicable to the use regardless of whether it is permitted outright or requires an administrative or conditional use permit.

Table 18.35.030. Permitted, Administrative, Conditional and Prohibited Uses by Zone

Permitted, Administrative, Conditional and Prohibited Uses by Zone						**P – Permitted C – Conditional A – Administrative X – Prohibited**
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
MARIJUANA RELATED BUSINESSES						
Marijuana processor	X	X	X	X	X	
Marijuana producer	X	X	X	X	X	
Marijuana researcher	X	X	X	X	X	
Marijuana retailer	X	X	X	X	X	

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
Marijuana transporter business	X	X	X	X	X	
PUBLIC						
Animal shelter, public	X	X	P	X	X	
Government facilities, this excludes offices and related uses that are permitted outright	A	A	P	P	C	
Municipal parks and playgrounds	P	P	P	P	P	
RECREATION, EDUCATION AND PUBLIC ASSEMBLY						
Campgrounds	X	X	X	P	P	
Recreational vehicle parks, private	X	X	X	P	X	
Cemetery, public	X	X	P	A	X	
Cemetery, private	X	X	X	A	X	
College, university, public	X	X	A	A	X	
Commercial recreation facility – Indoor	X	X	X	P	X	

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
Commercial recreation facility – Outdoor	X	X	X	A	C	ACC 18.57.025(A)
Conference/convention facility	X	X	X	A	X	
Library, museum	X	X	P	P	A	
Meeting facility, public or private	A	A	P	P	A	
Private school – specialized education/training (for profit)	P	P	X	P	X	
Public schools (K-12) and related facilities	X	X	P	P	X	
Religious institutions, lot size less than one acre	A	P	X	P	X	
Religious institutions, lot size more than one acre	C	A	X	P	X	

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
Studio – Art, dance, martial arts, music, etc.	P	X	X	X	X	
RESIDENTIAL						
Duplex	P[1]	X	X	A	X	
Home occupation	P	P	X	P	P	Chapter 18.60 ACC
Live/work, work/live unit	A	P	X	A	X	
Marijuana cooperative	X	X	X	X	X	
Multiple-family dwellings, stand-alone	P[2]	A[3]	X	A	X	
One detached single-family dwelling	P	X	X	X	P[5]	
Nursing home, assisted living facility	A	A	X	P	X	
Senior housing	A	A	X	A	X	
RETAIL						
Restaurant, cafe, coffee shop, excluding drive-through facilities	A	A	P	A	X	

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
SERVICES						
Banking and related financial institutions, excluding drive-through facilities[4]	P	P	X	X	X	
Daycare, including mini daycare, daycare center, preschools or nursery schools	A	P	X	P	A	
Home-based daycare	P	P	X	P	P	
Medical services – Clinic or urgent care[4]	P	P	X	X	X	
Mortuary, funeral home, crematorium	X	P	X	X	X	
Professional offices	P	P	X	A	A	
Personal service shops	P	P	X	X	X	
Pharmacies	X	P	X	X	X	
TRANSPORTATION, COMMUNICATIONS AND INFRASTRUCTURE						

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
Utility facilities, substations, utility transmission or distribution line	X	X	X	X	A	See ACC 18.02.040(E)
Wireless communication facility (WCF) (See ACC 18.04.912(W)	*	*	*	*	*	*See ACC
Eligible facilities request (EFR) (Wireless communication facility (See ACC 18.04.912(H))	P	P	P	P	P	
Small wireless facilities (ACC 18.04.912(Q))	P	P	P	P	P	
Emergency wireless communication facility (EWCF)	X	X	X	P	X	See ACC 18.04.912 and 18.31.100
OTHER USES THAT ARE NOT LISTED						

Permitted, Administrative, Conditional and Prohibited Uses by Zone						P – Permitted C – Conditional A – Administrative X – Prohibited
LAND USE	**Zoning Designations**					**Standards for Specific Land Uses**
	RO	**RO-H**	**P-1**	**I**	**OS**	
Other uses may be permitted by the planning director or designee if the use is determined to be consistent with the intent of the zone and is of the same general character of the uses permitted	P	P	P	P	P	

Notes:

1 Duplexes, 3,600 square feet of lot area per dwelling unit is required.

2 Multifamily dwellings; provided, that 2,400 square feet of lot area is provided for each dwelling unit.

3 Multifamily dwellings; provided 1,200 square feet of lot area is provided for each dwelling unit.

4 Permitted within a public college or university as an amenity or service provided to students: A stand-alone bank or medical services/clinic is not permitted.

5 One single-family detached dwelling unit per existing legal lot. No residential subdivisions permitted in the open space zone.

(Ord. 6716 § 1 (Exh. A), 2019; Ord. 6677 § 3, 2018; Ord. 6642 § 11, 2017; Ord. 6434 § 1, 2012.)

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6808 (Hinman)

Date:
December 16, 2020

Department:
Administration

Attachments:
Ordinance No. 6808

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

Administrative Recommendation:

City Council to adopt Ordinance No. 6808.

Background Summary:

The Auburn Junior City Council desires to have more flexibility in their meeting times and also a desire to make recruiting new members more efficient by changing some of the language of the Auburn City Code that dictates their operations.

Reviewed by Council Committees:

Councilmember:

Staff: Hinman

Meeting Date: December 21, 2020

Item Number: ORD.E

ORDINANCE NO. 6808

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 2.07.040(A), 2.07.040(E), AND 2.07.070(A) OF THE AUBURN CITY CODE RELATING TO THE AUBURN JUNIOR CITY COUNCIL MEMBERSHIP NOMINATIONS AND MEETINGS

WHEREAS, the Auburn Junior City Council ("AJCC") was created and established in 2013 by Ordinance 6441; and

WHEREAS, the City Council established the AJCC to serve as an advisory body to the Auburn City Council, and other city boards, commissions, and City staff to provide the youth perspective on all City functions; and

WHEREAS, ACC 2.07.040(E) requires that the Mayor and City Council annually solicit nominations from the school principals for AJCC membership; and

WHEREAS, there is a desire to increase membership in AJCC; and

WHEREAS, the City Council desires to permit membership nominations for the AJCC more frequently to encourage and promote membership and participation in the AJCC; and

WHEREAS, City staff, the City Council, and the AJCC seeks to modify the application process to allow for an application packet supported by letters of recommendation for interested individuals to apply for membership; and

WHEREAS, ACC 2.07.060(A)(1) states that the AJCC will be responsible for holding regular public meetings at least once a month; and

WHEREAS, ACC 2.07.070(A)(1) states that the AJCC will be responsible for holding regular public meetings once a month; and

WHEREAS, ACC 2.07.070(A)(1) states that the AJCC shall hold meetings in the Auburn City Council Chambers at City Hall; and

WHEREAS, the AJCC desires to hold meetings more frequently and allow for flexibility to change regular meeting times and location; and

WHEREAS, City staff recommends modification to the code language for consistency and flexibility regarding meeting times and locations and to improve the AJCC membership processes.

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

Section 1. Amendment to City Code. Section 2.07.040 of the Auburn City Code is amended to read as follows:

2.07.040 Membership

A. The Auburn junior city council shall consist of nine members and nine alternate members. The members and the alternate members shall be appointed by the mayor, and confirmed by the city council from among students who ~~have been nominated by the principals of the schools that they attend, with input from their teachers and counselors~~ submit a completed application. The nomination of members and alternates shall be based upon consideration of criteria including: interest in government, positive participation in civics classes, academic accomplishments, involvement in school and community activities and other factors that identify a prospective member as a valuable contributor to the Auburn junior city council. Those considering prospective members, making nominations and appointing or confirming members to the junior city council shall endeavor to include diverse members of the city's population, including one or more representatives of the Muckleshoot Indian Tribe.

….

E. Each member and alternate member shall serve a term of two years. Interested students shall submit a completed application that includes a letter of recommendation from the principal of the school they attend and one teacher or counselor to the mayor. The mayor and city council will ~~shall solicit nomination from the school principals, and~~ appoint and confirm new members and alternates to fill the expiring terms on the Auburn junior city council. The city council may remove an Auburn junior city council member or

alternate member at any time if the city council determines that member is not fulfilling their responsibilities to the satisfaction of the city council. Members and alternate members of the junior city council who fail to attend two consecutive regular meetings of the junior city council without being excused by the chairperson, or excused by a majority of the membership of the junior city council, shall forfeit their positions on and be removed from the junior city council.

Section 2. Amendment to City Code. Section 2.07.070(A) of the Auburn City Code is amended to read as shown as follows:

2.07.070 Meetings

A. The regular meetings of the junior city council shall be held at least once per month at a regularly scheduled date and time, and shall be held in the Auburn ~~city council chambers~~ City Hall or at a location as published in the meeting notice.

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:

_____
Kendra Comeau, City Attorney

Published: _____

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5566 (Gaub)

Date:
December 14, 2020

Department:
Public Works

Attachments:
Resolution No. 5566
Exhibit A
Exhibit B

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

Administrative Recommendation:

City Council to adopt Resolution No. 5566.

Background Summary:

Muckleshoot Development Corporation has applied to the City for vacation of the right-of-way of the Alley located north of Auburn Way South, between Dogwood St SE and Fir St SE. The applicant owns the adjacent parcel # 2021059024 to the south and is proposing to incorporate the right-of-way into development of the adjacent property.

The application has been reviewed by City staff and utility purveyors who have an interest in this right-of-way. Through this review City staff has determined that the right-of-way is no longer necessary to meet the needs of the City and could be vacated with conditions.

Resolution No. 5566, if adopted by City Council, sets the date of the public hearing for ROW Vacation No. V2-20 for January 19, 2021.

Reviewed by Council Committees:

Councilmember: Brown **Staff:** Gaub

Meeting Date: December 21, 2020 Item Number: RES.A

RESOLUTION NO. 5566

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, SETTING A PUBLIC HEARING TO CONSIDER THE VACATION OF RIGHT-OF-WAY OF THE ALLEY NORTH OF AUBURN WAY SOUTH BETWEEN DOGWOOD ST SE AND FIR ST SE, WITHIN THE CITY OF AUBURN, WASHINGTON.

WHEREAS, the City of Auburn, Washington, has received a petition signed by owners of at least two-thirds (2/3) of the property abutting right-of-way within the location of the alley north of Auburn Way South, between Dogwood St SE and Fir St SE, within the City of Auburn, Washington, requesting that the right-of-way be vacated; and,

WHEREAS, Section 35.79.010 of the Revised Code of Washington, requires that the City set a hearing on vacation by Resolution, with the date of the hearing being not more than sixty (60) days nor less than twenty (20) days after the date of passage of such Resolution.

WHEREAS, this Resolution is consistent with Auburn City Code 12.48.070 and calls for a public hearing to consider the proposed vacation.

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

Section 1. That a hearing on the vacation of right-of-way at the location of the Alley north of Auburn Way South, between Dogwood St SE and Fir St SE, located within the City of Auburn, Washington, legally described as follows:

THE ALLEY, 16 FEET IN WIDTH, CONVEYED TO THE CITY OF AUBURN BY QUIT CLAIM DEED UNDER RECORDING NUMBER 5881425, DATED MAY 20, 1965, RECORDS OF KING COUNTY, WASHINGTON, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, FOREST VILLA ADDITION TO THE CITY OF AUBURN, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 62 OF PLATS, PAGE 15, RECORDS OF KING COUNTY; THENCE ALONG THE SOUTH LINE OF SAID PLAT SOUTH 88°17'59" EAST, A DISTANCE OF 592.90 FEET TO THE SOUTHEAST CORNER OF LOT 8 OF SAID PLAT ALSO BEING A POINT ON THE WEST RIGHT OF WAY MARGIN OF FIR STREET SE.; THENCE ALONG SAID WEST MARGIN SOUTH 01°42'01" WEST, A DISTANCE OF 16.00 FEET TO THE SOUTH LINE OF THE AFOREMENTIONED QUIT CLAIM DEED; THENCE ALONG SAID SOUTH LINE NORTH 88°17'59" WEST, A DISTANCE OF 592.77 FEET TO THE EAST RIGHT OF WAY MARGIN OF DOGWOOD STREET SE.; THENCE ALONG SAID EAST MARGIN NORTH 01°14'45" EAST, A DISTANCE OF 16.00 FEET TO THE PONT OF BEGINNING.

CONTAINING 9,485 SQ. FT, 0.22 ACRES, MORE OR LESS.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON ALL LYING WITHIN THE MUCKLESHOOT INDIAN RESERVATION.

[Also identified as Exhibit "A".]

and as shown on the document attached, marked as Exhibit "B", is set for 7:00 p.m. on the 19th day of January, 2021, at the City Council Chambers at 25 West Main Street, Auburn, Washington, 98001, with all persons wishing to speak to the vacation at the public hearing being invited to attend.

Section 2. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation, including posting notice of such public hearing as required by State law and City Ordinance.

Section 3. This Resolution shall be in full force in effect upon passage and signatures.

DATED and SIGNED this _____ day of _____, 2020.

CITY OF AUBURN

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

EXHIBIT A
ALLEY VACATION LEGAL DESCRIPTION

THE ALLEY, 16 FEET IN WIDTH, CONVEYED TO THE CITY OF AUBURN BY QUIT CLAIM DEED UNDER RECORDING NUMBER 5881425, DATED MAY 20, 1965, RECORDS OF KING COUNTY, WASHINGTON, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

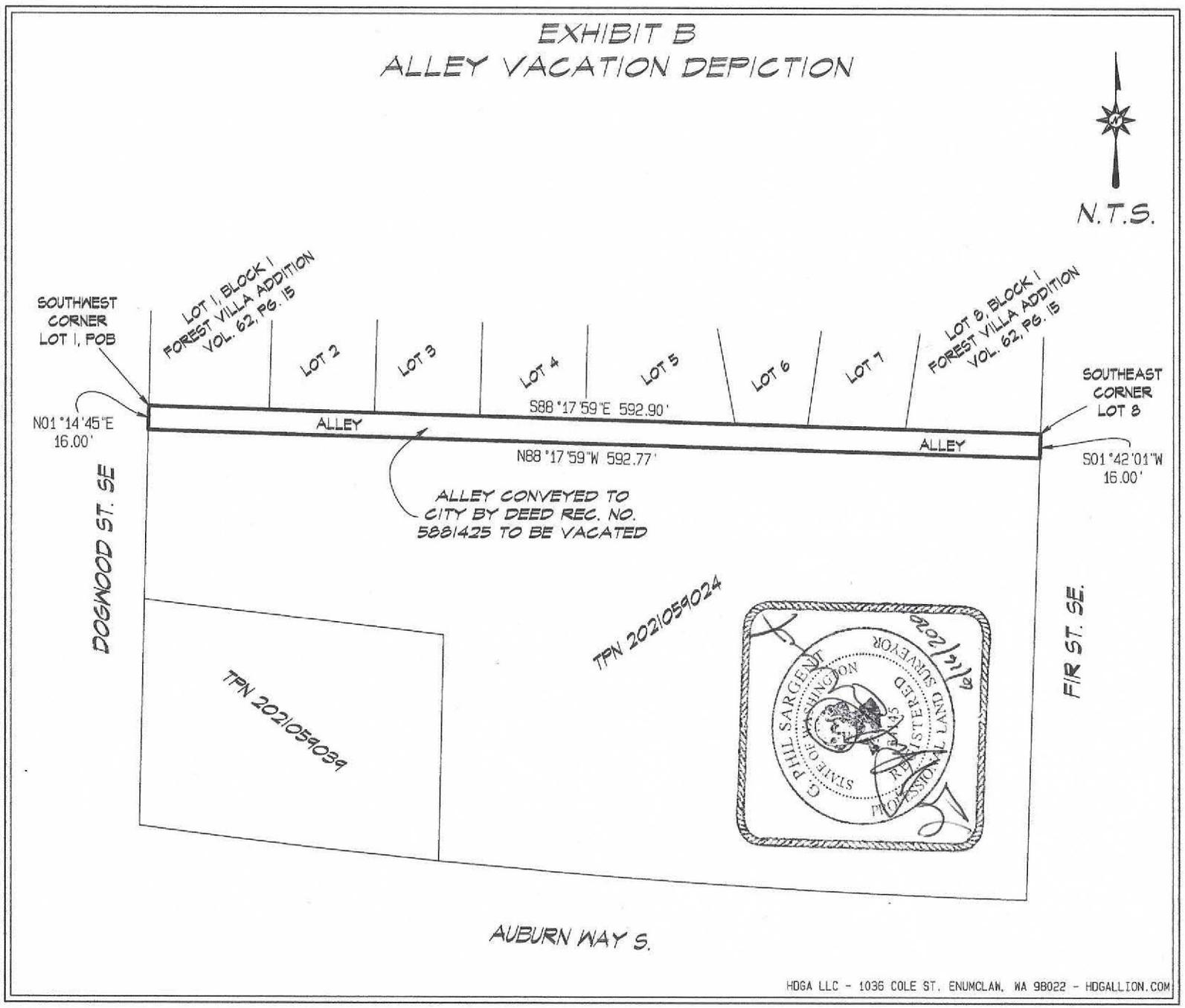
BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, FOREST VILLA ADDITION TO THE CITY OF AUBURN, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 62 OF PLATS, PAGE 15, RECORDS OF KING COUNTY; THENCE ALONG THE SOUTH LINE OF SAID PLAT SOUTH 88°17'59" EAST, A DISTANCE OF 592.90 FEET TO THE SOUTHEAST CORNER OF LOT 8 OF SAID PLAT ALSO BEING A POINT ON THE WEST RIGHT OF WAY MARGIN OF FIR STREET SE.; THENCE ALONG SAID WEST MARGIN SOUTH 01°42'01" WEST, A DISTANCE OF 16.00 FEET TO THE SOUTH LINE OF THE AFOREMENTIONED QUIT CLAIM DEED; THENCE ALONG SAID SOUTH LINE NORTH 88°17'59" WEST, A DISTANCE OF 592.77 FEET TO THE EAST RIGHT OF WAY MARGIN OF DOGWOOD STREET SE.; THENCE ALONG SAID EAST MARGIN NORTH 01°14'45" EAST, A DISTANCE OF 16.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 9,485 SQ. FT, 0.22 ACRES, MORE OR LESS.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON ALL LYING WITHIN THE MUCKLESHOOT INDIAN RESERVATION.



EXHIBIT B
ALLEY VACATION DEPICTION



AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution 5563 (Tate)

Date:
December 15, 2020

Department:
Community Development

Attachments:
Resolution No. 5563
2021 Draft CDBG Annual Action Plan

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

Administrative Recommendation:

City Council to adopt Resolution No. 5563.

Background Summary:

Every year, the City of Auburn is required to submit an Annual Action Plan to the Department of Housing and Urban Development (HUD) to guide the investment of Community Development Block Grant (CDBG) funds for the following program year. Auburn's current Action Plan ends in 2020 with the next plan year scheduled to start on January 1, 2021.

The 2021 Annual Action Plan is guided by the priorities and goals established in the 2020 – 2024 Consolidated Plan adopted by City Council in November 2019. The Action Plan outlines the specific programs and activities to be undertaken for the program year and the amount of funds that will be awarded to those projects. The program year for the City of Auburn begins January 1 and ends December 31.

A Public Hearing to consider this Plan and hear public comment was held before the City Council on December 7, 2020 in accordance with Auburn's Citizen Participation Plan for Community Development Block Grant funds.

Resolution No. 5563, if adopted by City Council, adopts the 2021 Annual Action Plan, and authorizes the Mayor to implement such administrative procedures as may be necessary to carry out directions of the legislation.

Reviewed by Council Committees:

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

Meeting Date: December 21, 2020 Item Number: RES.B

RESOLUTION NO. 5563

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ADOPTING THE 2021 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN FOR THE CONSOLIDATED PLAN YEARS 2020-2024

WHEREAS, the City of Auburn was designated as an entitlement community by the U.S. Department of Housing and Urban Development (HUD) for its Community Development Block Grant (CDBG) Program; and

WHEREAS, the primary objective of the Consolidated Plan and CDBG Program is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-income and moderate-income; and

WHEREAS, to be eligible for funding, the City of Auburn must annually update the action plan for its Consolidated Plan that serves as a federally required planning document to guide the City of Auburn's human service and community development efforts; and

WHEREAS, the planning process to develop the Consolidated Plan involved citizen participation and guidance from non-profit and governmental agencies serving low income residents in the community; and

WHEREAS, the City Council of the City of Auburn heard and considered public comment about its proposed 2021 Action Plan.

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

Section 1. Pursuant to the provisions of 24 CFR 91, the City hereby adopts the 2021 Action Plan for the Consolidated Plan for Years 2020-2024.

Section 2. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2020.

CITY OF AUBURN

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Executive Summary

AP-05 Executive Summary - 91.200(c), 91.220(b)

1. Introduction

Each year the City of Auburn executes specific actions to implement the goals and strategies of the Consolidated Plan for Years 2020-2024. Actions that will be undertaken in 2021 are outlined in this Annual Action Plan.

The City of Auburn anticipates the receipt of approximately $630,000 in Community Development Block Grant (CDBG) funds in 2021. In addition to CDBG funds, the City is planned to allocate approximately 0.92% of the City's General Funds to Human Services. The City's Human Services program, housed in the Community Services Division, oversees and is responsible for providing and managing financial resources to more than 30 non-profit agencies that serve the Auburn community. The Community Services division is also responsible for administering the local housing repair program and developing collaborations among community partners to strengthen the response to residents in need.

The 2020 Action Plan proposes to allocate $90,000 of CDBG funds to public services. Most of those funds ($70,000) will be used to support Homelessness Prevention and Intervention. The remaining $20,000 will be allocated to Fair Housing public services, in keeping with our Consolidated Plan priorities and challenges identified in the 2019 Analysis of Impediments to Fair Housing Choice.

Approximately $115,000 of the CDBG funds will be allocated to program administration, which includes planning, citizen participation, and administration of the City's CDBG-funded Housing Repair Program. The remaining $350,000 will be allocated to residential rehabilitation, providing free minor home repair services to low- and very low-income Auburn residents.

The City of Auburn is committed to continuing to focus on achieving equitable outcomes for its community members and achieving a greater collaboration among service providers. Overall the implementation of the Consolidated Plan is progressing as planned and all of the activities included are underway.

2. Summarize the objectives and outcomes identified in the Plan

This Action Plan allocates a total of $630,000 dollars in anticipated 2021 Community Development Block Grant funds, to support the Community Development Block Grant program. With the overall goal of reducing the number of people living in poverty within the City of Auburn, the following objectives and outcomes will be employed:

1. Affordable Housing: The City of Auburn will engage in housing activities, collaborations, and partnerships to enhance opportunities for the creation and preservation of affordable housing. The City will plan for and support fair housing strategies and initiatives designed to affirmatively further fair housing choice, and to increase access to housing and housing programs.
2. Ending Homelessness: The City of Auburn will support Public Service activities that work toward the following outcomes: 1) reduce the number of households becoming homeless; 2) reduce the length of time that households are homeless; 3) increase the rate of exits to permanent housing; and 4) reduce the number of households that re-enter the homeless system after exit to permanent housing.
3. Community and Economic Development: In an effort to meet the need of Auburn's economic and demographic growth the City intends to fund programs and activities that will enhance the economy, accessibility, safety, and physical appearance of neighborhoods. Activities that would be eligible for funding include fair housing public services, public infrastructure and ADA improvements for public facilities. These investments help to ensure equitable opportunities for good health, happiness, safety, self-reliance and connection to community.
4. Planning and Administration: Administer the Community Development Block Grant program to meet the community needs and HUD requirements

To accomplish these outcomes and objectives, the City invests in programs that meet the community basic needs, increase self-sufficiency, provide economic opportunity and develop a safe community.

3. Evaluation of past performance

During the past year Auburn has accomplished significant achievement on its programs and impacted the lives of thousands of residents. In 2019 alone, projects funded by the City completed the following:

- 59 very low- and low-income Auburn homeowners received housing repair services. Roughly 70% of these homeowners were seniors.
- Over 200 low to moderate income residents received free or low cost medical and/or dental care

- 9 Low-income Auburn residents received job training assistance. At least half obtained and maintained their job.
- 3 Sidewalk projects were completed to support greater ADA accessibility for Auburn residents, with an estimated direct impact for 8,585 residents.

4. Summary of Citizen Participation Process and consultation process

The city is engaged in a public participation process for the 2021 Annual Action Plan, as outlined below:

- Drafts of the Action Plan have been made available for public via mail and on the City's website and notices of its public view were publicized in the local newspaper as of November 5, 2020
- A public hearing was provided on October 26, 2020, during the City's Human Services Committee meeting to hear public comment and input on priorities to be included in the 2021 Annual Action Plan. Consistent with local health guidelines related to COVID-19, this public hearing was conducted virtually.
- An additional public hearing was held on December 7, 2020, during the Auburn City Council meeting, to hear public comment and input on the published draft of the 2021 Annual Action Plan. Consistent with local health guidelines related to COVID-19 and the City's amended Citizen Participation Plan, this public hearing was conducted virtually.

The City of Auburn in conjunction with the Consortium consulted with multiple public and private agencies during the development of the consolidated plan. Consultations occurred during regional meetings as well as in individual conversations. Agencies that participated in consultations regarding public services, fair housing, and other topics relevant to the drafting of the 2021 Annual Action Plan included: the King County Housing Authority, local legal assistance providers, other government human service providers and nonprofit agencies delivering services in Auburn and the sub-region.

In addition to conducting consultations during the development of the plan, the City of Auburn collaborates and works closely with numerous coalitions, committees and government entities.

5. Summary of public comments

No public comments were received.

6. Summary of comments or views not accepted and the reasons for not accepting them

No public comments were received.

7. Summary

No public comments were received.

PR-05 Lead & Responsible Agencies - 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

The following are the agencies/entities responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
Lead Agency	AUBURN	Community Development Department
CDBG Administrator	AUBURN	Community Development Department
ESG Administrator	KING COUNTY	DCHS

Table 1 – Responsible Agencies

Narrative

The City of Auburn, as a member of the King County Consortium, administers its own CDBG funds and prepares its own Consolidated Plan and Annual Action Plans for the administration of those funds.

As a member of the King County Consortium, the City works closely with numerous nonprofit organizations in the region that implement programs funded by the City of Auburn CDBG program. A detailed list of agencies responsible for administering funded programs by CDBG can be found in the Action Plan section of this document.

Consolidated Plan Public Contact Information

Joy Scott

Community Services Manager
City of Auburn
25 West Main Street
Auburn, WA 98001
253.876.1965
jfscott@auburnwa.gov

AP-10 Consultation - 91.100, 91.200(b), 91.215(l)

1. Introduction

This section describes the community consultation process followed by the City of Auburn in developing the 2021 Annual Action Plan and the coordination with other local governments, the Continuum of Care, service agencies, and community stakeholders. The City of Auburn consulted with multiple public and private agencies as well as community members during the development of the Consolidated Plan.

In addition to conducting consultations during the development of the plan, the City of Auburn collaborates and works closely with numerous coalitions, committees, and government entities throughout the duration of the plan in efforts to enhance strategies and systems to meet established goals and objectives of the plan.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l)).

The City of Auburn works closely with partnering King County jurisdictions, public housing authorities and health providers to develop systems in order to improve the quality of service and access for low-income residents as well as the community as a whole within the city and throughout the region.

The City of Auburn, in partnership with the Seattle-King County Coalition on Homelessness, convenes a monthly group of service providers, faith communities, community advocates, and others, to coordinate efforts on serving individuals experiencing homelessness in South King County. The meeting provides a venue for resource sharing, collaboration, training, and best practice implementation. City staff also participate in regional collaborative and decision making bodies such as the King County Joint Recommendations Committee (JRC) and the South King County Human Services Planners group. The city is a member of the King County Human Services Funder Collaborative, which provides a more streamlined process for human service agencies to access funding from multiple cities.

Additionally, the City participates in monthly Homelessness Action Committee meetings with staff from King County Department of Community and Human Services, Public Health King County, the Housing Development Consortium, Valley Cities, the Multi-Service Center, and the King County Housing Authority to review program progress and delivery of homeless services funded through regional efforts. In addition to these groups, the City's regional collaboration

work on affordable housing is supported by the South King Housing and Homelessness Partners, which Auburn and other South King County Cities contribute to in order to build additional capacity to address issues related to housing and homelessness in the South King County region.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

Since 2016, King County and All Home, our region's Continuum of Care (CoC) lead agency, launched the Coordinated Entry for All (CEA) system for homeless populations and has been refining the system since then. National research identifies coordinated entry as a key component for an effective homeless system because it improves the quality of client screening and assessment, matches clients to appropriately targeted services and resources, and promotes a more efficient use of resources. CEA processes and prioritizes assistance based on vulnerability and severity of service needs to ensure that people who need assistance the most can receive it in a timely manner.

A key feature of the CEA system includes a common assessment tool, the CEA Housing Triage Tool, which is based upon vulnerability and severity of service needs to ensure that people who need assistance the most can receive it in a timely manner. Chronically homeless individuals and families, families with children, veterans, unaccompanied youth, and young adults are a part of the coordinated system. In addition, CEA utilizes regional access points which serve as the primary "front door" for the homeless housing system.

Auburn's mayor has been connected to the county's transition from All Home to the newly created Regional Homeless Authority.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

The ESG program focuses on assisting people to quickly regain stability in permanent housing after experiencing homelessness or a housing crisis. Auburn does not receive ESG funds directly.

Coordinating with King County's Continuum of Care (CoC) is critical to our region's implementation. The City will look for ways of participating in and collaborating with the newly established Regional Homelessness Authority and its Advisory Committee, which will serve as the Continuum of Care.

The City of Auburn supports the continuum of housing including prevention, emergency shelter, transitional housing, and permanent housing. The City provides financial support for these efforts with

City general funds and also commits staff and leadership time to the ongoing development and implementation of the system to address the needs of persons experiencing homelessness.

The City participates in and supports numerous coalitions and committees, such as the South King County Forum on Homelessness and the Homelessness Action Committee, focusing on developing resources in South King County. The City also participates in the annual Count Us In, Point in Time Count, which provides invaluable data for planning. The City provides both CDBG and local funds to agencies that serve chronically homeless individuals and families with children, veterans, and unaccompanied youth.

2. Agencies, groups, organizations and others who participated in the process and consultations

1	**Agency/Group/Organization**	KING COUNTY
	Agency/Group/Organization Type	Other government - County
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Market Analysis
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	As a member of the King County Housing Consortium for the purpose of HOME funds, Auburn works closely with King County in the development of the City's and the County's Consolidated Plan. Because the two entities have a cardinal role in each other's program delivery there is active participation from both parties in the development of the plan. Staff from King County and Auburn met regularly prior to and during the development of the plan, and Auburn rotates as a regular voting member of the County's Joint Recommendations Committee.
2	**Agency/Group/Organization**	KENT
	Agency/Group/Organization Type	Other government - Local

	What section of the Plan was addressed by Consultation?	Housing Need Assessment Lead-based Paint Strategy Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Market Analysis Anti-poverty Strategy
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	As members of the Urban County Consortium, Auburn and Kent staff worked closely together during the development of the Consolidated Plan. Staff from both cities attend monthly meetings to discuss human services and housing trends, needs, and progress on ongoing initiatives.
3	**Agency/Group/Organization**	FEDERAL WAY
	Agency/Group/Organization Type	Other government - Local
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Lead-based Paint Strategy Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Market Analysis Anti-poverty Strategy
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	As members of the Urban County Consortium, Auburn and Federal Way staff worked closely together during the development of the Consolidated Plan. Staff from both cities attend monthly meetings to discuss human services and housing trends, needs, and progress on ongoing initiatives.
4	**Agency/Group/Organization**	Housing Development Consortium of Seattle-King County
	Agency/Group/Organization Type	Planning organization

	What section of the Plan was addressed by Consultation?	Housing Need Assessment Public Housing Needs Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Auburn participates in monthly meetings convened by the Housing Development Consortium (HDC) on homeless response needs and strategy in SKC, and bimonthly meetings focused on affordable housing data and developments. The information collected by HDC helps to inform multiple pieces of our Consolidated Plan and Annual Action Plan, particularly those strategies related to homelessness and affordable housing in our community.
5	**Agency/Group/Organization**	Seattle-King County Coalition on Homelessness
	Agency/Group/Organization Type	Services-homeless Nonprofit agency
	What section of the Plan was addressed by Consultation?	Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Auburn is a member of the Seattle-King County Coalition on Homelessness (SKCCH), and co-convenes a monthly group of service providers working with people experiencing homelessness in our communities. The meetings provide a frequent check-in point, and the opportunity to hear from providers directly on the challenges and trends they're seeing in Auburn. The Coalition on Homelessness' organizational members include agencies and community groups that provide emergency shelter and services, transitional housing, and permanent, supported housing to the roughly 27,000 men, women, and children who are homeless in King County during one year.

6	**Agency/Group/Organization**	South King County Housing and Homelessness Partners
	Agency/Group/Organization Type	Other government - Local Regional organization
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Public Housing Needs Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	South King Housing and Homelessness Partners (SKHHP) is a coalition formed by an interlocal agreement between the jurisdictions of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Normandy Park, Renton, Tukwila, and King County. The agreement allows for South King County jurisdictions to work together and share resources in order to effectively address affordable housing and homelessness. This collaborative model is based on similar approaches used in Snohomish County, East King County, and other areas of the country. The purpose of the coalition is to increase the available options for South King County residents to access affordable housing and to preserve the existing affordable housing stock.

Table 2 – Agencies, groups, organizations who participated

Identify any Agency Types not consulted and provide rationale for not consulting

A wide range of groups and organizations participated in the process including public funders from Washington State and King County partner jurisdictions, public housing authorities, members from the Seattle-King County Housing Development Consortium, stakeholders, housing providers for low-and-moderate income persons, agencies who serve persons who are homeless, and Seattle-King County Public Health. In addition to the consultations referenced above, Auburn, King County and Consortium partner staff coordinate closely with each other and fan out to participate and attend a wide range of standing meetings with city planners, housing and service providers.

The only types of organizations not consulted with were corrections facilities. The rationale for not consulting with these facilities is that the City does not host this type of organization.

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	King County Regional Homeless Authority	The goals of Auburn's Strategic Plan overlap with the goals of the CoC to address the needs of homeless residents in the community and reduce the risk of homelessness.

Table 3 - Other local / regional / federal planning efforts

Narrative

AP-12 Participation - 91.401, 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation

Summarize citizen participation process and how it impacted goal-setting

Citizen participation plays a crucial role in the success of the City's Annual Action Plan. The goals are to hear the community's feedback and recommendations on how CDBG funds should be invested and how services can coordinate to achieve the greatest impact. In addition to the targeted outreach listed below, the City regularly engages service providers and stakeholders in discussions regarding human services and local economic development needs. Organizations funded by the city are monitored throughout the year and report quarterly on progress, trends, and challenges. City staff co-host a monthly meeting of service providers working with individuals and families experiencing homelessness in the region to gather feedback and support increased capacity building through broad collaboration of regional providers. In addition, City staff meet regularly with other cities in the area and other funders to evaluate gaps in services and seek solutions to local and regional community development challenges.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1.	Public Hearing	Non-targeted/broad community				
2.	Newspaper Ad	Non-targeted/broad community				
3.	Web posting on City's Human Services page	Service providers in Auburn				

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources - 91.420(b), 91.220(c)(1,2)

Introduction

The City of Auburn anticipates funding for the duration of the Consolidated Plan from

- CDBG
- City of Auburn General Fund allocation for Human Services

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan $	Narrative Description
			Annual Allocation: $	Program Income: $	Prior Year Resources: $	Total: $		
CDBG	**Public-federal**	Admin and Planning Fair Housing Public Improvements Public Services	**Estimated: $630,000**	**0**	**0**	**Estimated: $630,000**	**$2,520,000**	**Auburn is anticipating approximately $630,000 per year in CDBG funds for the remainder of the Consolidated Plan period.**
General Fund	**Public - local**	Public Services	**Estimated: $680,000**	**0**	**0**	**Estimated: $680,000**	**$2,720,000**	

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The City of Auburn relies on CDBG funds to support community and economic development projects and activities in efforts to support low to moderate income populations to become self-sufficient and sustain affordable housing. However, CDBG funds are not the only source of funds the City uses to support community projects and activities.

The City's general funds are used to support direct services benefitting Auburn's at risk populations in addition to CDBG funds.

CDBG funds do not require matching funds.

If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

N/A

Discussion

The City of Auburn will use CDBG funds to support all eligible projects and activities that align with CDBG guidelines and regulations.

Annual Goals and Objectives

AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e)

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Affordable Housing	2020	2024	Affordable Housing Public Housing Homeless Non-Homeless Special Needs		Affordable Housing	CDBG: $370,000	Homeowner Housing Rehabilitated: 65 Household Housing Unit Fair Housing Public Service Activities: 25 Persons Assisted
2	Ending Homelessness	2020	2024	Homeless		Ending Homelessness	CDBG: $70,000	Public service activities other than Low/Moderate Income Housing Benefit: 96 Persons Assisted
3	Community and Economic Development	2020	2024	Non-Homeless Special Needs Non-Housing Community Development		Community and Economic Development	CDBG: $75,000	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 500 Persons Assisted
4	Planning and Administration	2020	2024				CDBG: $115,000	Other: 0 Other

Table 6 – Goals Summary

Goal Description

1	**Goal Name**	Affordable Housing
	Goal Description	The City of Auburn will engage in housing activities, collaborations, and partnerships to enhance opportunities for the creation and preservation of affordable housing. The City will plan for and support fair housing strategies and initiatives designed to affirmatively further fair housing choice, and to increase access to housing and housing programs.
2	**Goal Name**	Ending Homelessness
	Goal Description	The City of Auburn will support Public Service activities that work toward the following outcomes: 1) reduce the number of households becoming homeless; 2) reduce the length of time that households are homeless; 3) increase the rate of exits to permanent housing; and 4) reduce the number of households that re-enter the homeless system after exit to permanent housing.
3	**Goal Name**	Community and Economic Development
	Goal Description	In an effort to meet the need of Auburn's economic and demographic growth the City intends to fund programs and activities that will enhance the economy, accessibility, safety, and physical appearance of neighborhoods. Activities that would be eligible for funding include fair housing public services, public infrastructure and ADA improvements for public facilities. These investments help to ensure equitable opportunities for good health, happiness, safety, self-reliance and connection to community.
4	**Goal Name**	Planning and Administration
	Goal Description	General administration and project management

AP-35 Projects - 91.420, 91.220(d)

Introduction

Auburn's Annual Action Plan provides descriptions of proposals of how funds will be prioritized to achieve goals identified in the Consolidated Plan. Projects funded by the City will address the priority needs of providing assistance to prevent homelessness, ensure affordable housing and a suitable living environment. Projects and programs are selected through a competitive application process to ensure optimal quality services is provided to the community in use of the funds.

#	Project Name
1	HOUSING REPAIR
2	ADMINISTRATION
3	SOLID GROUND HOUSING STABILITY PROGRAM
4	HOUSING JUSTICE PROJECT
5	FAIR HOUSING PUBLIC SERVICES
6	ADA SIDEWALK IMPROVEMENTS

Table 7 – Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

The allocations proposed are based on the assessment of Auburn's needs, the resources available in the region, the availability of other funds also focusing on needs, and the purpose of Consolidated Plan funds.

Should CDBG revenues exceed the proposed amount, the additional resources shall be allocated in accordance to the following guidelines:

- Fill gaps in human services primarily healthcare, homeless prevention and intervention and affordable housing accessibility.
- Increase funding for community development projects and activities including housing, community facilities and economic development.

If increases are not significant enough to enhance projects or activities funds may be placed in contingency for programming later in the year or the following program year.

Should CDBG revenues come in lower than anticipated; the City will continue with its planned policy and to the extent allowed reduce funding allocations in homeowner rehabilitation

projects and administrative activities.

Should CDBG revenues come in less than originally proposed, the City will continue managing the programs with decreased resources to the extent possible and reduce funding allocations in administrative activities and not public services.

AP-38 Project Summary

Project Summary Information

1	**Project Name**	Housing Repair
	Target Area	None
	Goals Supported	Affordable Housing
	Needs Addressed	Affordable Housing
	Funding	CDBG: $350,000
	Description	Maintain the affordability of decent housing for low-income Auburn residents by providing repairs necessary to maintain suitable housing for low income Auburn homeowners.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	An estimated 65 low- and very low-income families will benefit from the housing repair program. As the City's largest homeless prevention program, housing repair ensures the sustainability of a safe home for some of Auburn's most vulnerable residents. Of the 65 low to moderate income residents who apply for the program, over half of them are of the senior and disabled population.
	Location Description	n/a
	Planned Activities	Activities include minor home repairs.
2	**Project Name**	Administration
	Target Area	None
	Goals Supported	All
	Needs Addressed	Planning and Administration
	Funding	CDBG: $115,000
	Description	General administration and project management

	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	n/a
	Location Description	n/a
	Planned Activities	General planning and administration of the CDBG programs include: management of the housing repair program, management of all CDBG related finances, all grant reporting, monitoring of subrecipients and providing guidance of program implementation in Auburn.
3	**Project Name**	Solid Ground Housing Stability Program
	Target Area	
	Goals Supported	End Homelessness
	Needs Addressed	Ensure a Suitable Living Environment
	Funding	CDBG: $55,000
	Description	Provide time limited emergency subsistence/rental assistance to Auburn residents paired with supportive services based on the progressive engagement model to support homelessness prevention and increased housing stability. This is a public service activity.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	26 low to moderate income Auburn residents will benefit from the housing stability program.
	Location Description	n/a
4	**Project Name**	Housing Justice Project
	Target Area	none
	Goals Supported	End Homelessness

	Needs Addressed	Ensure a Suitable Living Environment
	Funding	CDBG: $15,000
	Description	The King County Housing Justice project provides legal representation and support to low income residents threatened with eviction.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	70 low to moderate income Auburn residents will benefit from the improvements.
	Location Description	n/a
	Planned Activities	Planned activities include free legal assistance via attorney consultations. This is a public service activity.
5	**Project Name**	Fair Housing Public Services
	Target Area	
	Goals Supported	Affordable Housing
	Needs Addressed	Ensure a Suitable Living Environment.
	Funding	CDBG: $20,000
	Description	Make funds available through an RFP process to nonprofit agencies to provide Fair Housing services to Auburn residents.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	An estimated 25 low income households will benefit from the proposed activity.
	Location Description	n/a

6	**Project Name**	ADA Sidewalk Accessibility Improvements
	Target Area	none
	Goals Supported	Community and Economic Development
	Needs Addressed	Ensure a Suitable Living Environment
	Funding	CDBG: $75,000
	Description	Provide sidewalk ADA improvements in low- to moderate-income areas of Auburn, improving accessibility, safety, and community connectedness.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	500 low to moderate income Auburn residents will benefit from the improvements.
	Location Description	TBD
	Planned Activities	Planned activities include sidewalk improvements to install missing sections or ADA-compliant curb ramps.

AP-50 Geographic Distribution - 91.420, 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

The City of Auburn intends on distributing funds throughout the jurisdiction.

Geographic Distribution

Target Area	Percentage of Funds

Table 8 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Due to the fact that all areas of Auburn have low to moderate income families dispersed throughout the entire City, the City intends on investing throughout the entire jurisdiction to ensure that all populations throughout the region have access to beneficial programs and housing opportunities.

Discussion

Due to the fact that all areas of Auburn have low to moderate income families dispersed throughout the entire City, the City intends on investing throughout the entire jurisdiction to ensure that all populations throughout the region have access to beneficial programs and housing opportunities.

AP-75 Barriers to affordable housing -91.420, 91.220(j)

Introduction

The City of Auburn will continue to work with service providers, the housing authority and residents in coordination to fully address and develop systems and strategies to promote their efforts in providing sustainable, affordable housing.

Auburn's partnerships with organizations such as the King County Housing Authority and the Housing Development Consortium of Seattle King County have allowed the City to explore new and innovative strategies to continue to offer affordable housing to its current and prospective residents.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

The City of Auburn will continue to look at policies that remove barriers to affordable housing. The City of Auburn's Comprehensive Land Use Plan includes several policies and objectives that will guide the city toward achieving its affordable and fair housing goals. These policies include maintaining flexibility in land use to achieve a balanced mix of affordable housing opportunities. The City will continue to pursue mixed use developments that are consistent with the transportation oriented developments located in Auburn's downtown. The City will look for opportunities with public and private agencies to implement policies and offer programs that help alleviate physical and economic distress, conserve energy resources, improve the quality and quantity of community services, and eliminate conditions that are detrimental to health, safety and public welfare.

In 2019, the Washington State Legislature adopted House Bill 1923, which awarded grants in the amount up to $100,000 to cities for the purpose of increasing residential capacity. The City of Auburn partnered with five other South King County jurisdictions to establish a sub-regional framework of existing conditions. The results of that effort are being used to inform and aid in the development of Auburn’s own Housing Action Plan.

Housing Action Plan efforts are focused on encouraging construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market. The final Housing Action Plan will be required to be in compliance with state law, including adoption of grant-funded actions by City Council no later than April 1, 2021.

In 2020 the City of Auburn passed an ordinance adopting a new chapter of Rental Housing Code. Included in this ordinance were multiple housing stability strategies, including increased notice of rental increases, a cap on late fees, and a Just Cause Eviction Ordinance that requires landlords to have good cause in order to evict or terminate tenancy of a renter. Just Cause protections are especially helpful in addressing fair housing issues, and this adoption was consistent with the City's efforts related to the Analysis of Impediments to Fair Housing Choice. This builds on previous protections passed by Auburn City Council, including Source of Income Discrimination protections and enhanced rental inspections.

AP-85 Other Actions - 91.420, 91.220(k)

Introduction

The City of Auburn will continue to work with service providers throughout the region in coordination to develop systems and strategies to promote their efforts in providing optimal, easily accessible services. The City will work to reduce the number of families in poverty, sustain relationships with employment training agencies, and work to preserve and increase the affordable housing stock in our community.

Actions planned to address obstacles to meeting underserved needs

By establishing a strong foundation of networks between local service providers, stakeholders and government agencies through committees and coalitions, the City will work in partnership to address obstacles and ameliorate barriers to meeting underserved needs. The collaborated organizations will develop detailed strategic plans that will delegate tasks, build systems and ongoing assessment of service delivery.

Actions planned to foster and maintain affordable housing

The City will continue to maintain the affordability of decent housing for low income Auburn residents by allocating over $300,000 of CDBG funds to the City's Housing Repair Program. The program provides emergency repairs necessary to maintain safe housing for at least 65 Auburn homeowners, many of whom are senior citizens and/or are experiencing barriers to safely accessing their homes due to physical disabilities.

In addition to Auburn's Housing Repair program, the City will maintain affordable housing by continuing to engage and partner with coalitions, committees and other government agencies to integrate and enhance efforts on the issue.

The City is currently developing a Housing Action Plan, as discussed in AP-75, that will help guide future efforts in this area. Adoption of that Action Plan should take place in mid-2021.

Auburn has been participating in multiple robust regional efforts to coordinate affordable housing activities in King County. One of these efforts, The South King Housing and Homelessness Partners (SKHHP) is a coalition formed by an interlocal agreement between the jurisdictions of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Normandy Park, Renton, Tukwila, and King County. The agreement allows for South King County jurisdictions to work together and share resources in order to effectively address affordable housing and homelessness. This collaborative model is based on similar approaches used in Snohomish County, East King County, and other areas of the country. The purpose of the coalition is to increase the available options for South King County residents to access affordable housing and

to preserve the existing affordable housing stock.

Additionally, the City of Auburn has been an active participant in the recently formed Affordable Housing Committee of the Growth Management Planning Council (GMPC), with a City Councilmember sitting on the Committee as a voting member. The Affordable Housing Committee serves as a regional advisory body to recommend action and assess progress toward implementing the Regional Affordable Housing Task Force (RAHTF) Five Year Action Plan. The Committee functions as a point in coordinating and owning accountability for affordable housing efforts across King County.

Actions planned to reduce lead-based paint hazards

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

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

Actions planned to reduce the number of poverty-level families

The City of Auburn's planned actions to reduce the number of poverty- level families within the context of this Annual Action Plan include but are not limited to:

- Allocating $350,000 to the Housing Repair program, which serves low- and very low-income residents and supports households to remain in safe and affordable housing.
- Allocating $75,000 to public service activities providing Homelessness Prevention and Intervention services.
- Participate and partner with coalitions, committees and agencies that provide antipoverty services to develop and enhance strategies and efforts to reduce poverty level families.
- Supporting the development and sustainability of affordable multi-family housing in

Auburn.

In addition, the city will continue to support and fund programs serving families living in poverty through a competitive human services funding process.

Actions planned to develop institutional structure

The City's planned actions to address the gaps and weaknesses identified in the strategic plan include:

- Maintaining partnerships with and participating in the South King County Housing and Homelessness Partnership, the Regional Homelessness Authority of King County and other regional human service providers, coalitions and committees who address homeless issues. The City will also continue to work collaboratively with partnering organizations and groups to integrate and enhance services to provide optimal services to individuals and families currently experiencing or at risk of homelessness. In addition the City plans to prioritize General Fund human services dollars for housing and homelessness interventions, and allocate more than $150,000 to basic needs services such as food, financial assistance, clothing and healthcare.
- Take a comprehensive approach to consolidated and comprehensive planning to include all internal City departments, commissions, committees and task forces.

Actions planned to enhance coordination between public and private housing and social service agencies

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

Discussion

The expressed goal of the City's Consolidated Plan is to reduce the number of people living in poverty within Auburn. The City intends to give funding priority to programs that in addition to complying with federal regulations and address a priority a outlined in the Consolidated Plan are consistent with all of the goals and objectives identified.

Program Specific Requirements

AP-90 Program Specific Requirements - 91.420, 91.220(l)(1,2,4)

Introduction

Community Development Block Grant Program (CDBG)
Reference 24 CFR 91.220(l)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan
3. The amount of surplus funds from urban renewal settlements
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.
5. The amount of income from float-funded activities

Total Program Income

Other CDBG Requirements

1. The amount of urgent need activities

Discussion

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution 5567 (Tate)

Date:
December 15, 2020

Department:
Community Development

Attachments:
Resolution No. 5567
CDBG 2019 Annual Action Plan Amendment

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

Administrative Recommendation:

City Council to adopt Resolution No. 5567.

Background Summary:

On March 27, 2020, the U.S. Congress passed The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), also known as the CARES Act. The bill allocates $5 billion in supplemental Community Development Block Grant (CDBG) funding for grants to prevent, prepare for, and respond to the coronavirus (CDBG-CV).

In addition to making new CDBG-CV funds available, the Department of Housing and Urban Development (HUD) is allowing grantees to reallocate 2019 or 2020 program year CDBG funds to public services that respond to Coronavirus and lifting the 15% public service cap.

HUD notified the City of Auburn on September 16, 2020 of a third round of funding for CDBG-CV, making $541,197 available for the City's CDBG Coronavirus response.

This substantial amendment of the 2019 Action Plan is a requirement of HUD in order for the City of Auburn to receive the allocation related to the third funding round of CDBG-CV from the CARES Act. The attached plan is amended to incorporate $541,197 of CDBG-CV funds to prevent, prepare for, and respond to the coronavirus.

Through this resolution, the Mayor is provided the authority to implement administrative procedures necessary to carry out the directives of this plan.

Reviewed by Council Committees:

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

Meeting Date: December 21, 2020 Item Number: RES.C

RESOLUTION NO. 5567

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ADOPTING THE SUBSTANTIAL AMENDMENT TO THE 2019 COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN TO INCORPORATE ADDITIONAL CDBG-CV FUNDS

WHEREAS, the City of Auburn was designated as an entitlement community by the U.S. Department of Housing and Urban Development (HUD) for its Community Development Block Grant (CDBG) Program; and

WHEREAS, the primary objective of the Consolidated Plan and CDBG Program is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-income and moderate-income; and

WHEREAS, on March 27, 2020, the U.S. Congress passed The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), also known as the CARES Act, which allocates $5 billion in supplemental CDBG funding for grants to prevent, prepare for, and respond to the coronavirus (CDBG-CV);

WHEREAS, to allocate additional funds received, a substantial amendment must be made to the 2019 Annual Action Plan that serves as a federally required planning document to guide the City of Auburn's human service and community development efforts; and

WHEREAS, the planning process to develop the Consolidated Plan involved citizen participation and guidance from non-profit and governmental agencies serving low income residents in the community.

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

Section 1. Pursuant to the provisions of 24 CFR 91, the 2019 Annual Action Plan previously adopted by the City of Auburn City Council is amended, consistent with the attached Exhibit "A", making approximately $541,197 of CDBG-CV funds available for projects that are consistent with federal regulations and with the objectives and policies of the Auburn Community Development Block Grant Consolidated Plan, primarily to provide public services that prevent, prepare for, and respond to the coronavirus for low to moderate income Auburn residents.

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

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:

_____
Kendra Comeau, City Attorney

City of Auburn CDBG 2019 Annual Action Plan Amendment

Executive Summary

AP-05 Executive Summary - 91.200(c), 91.220(b)

1. Introduction

This substantial amendment of the 2019 Action Plan is a requirement of the U.S. Department of Housing and Urban Development (HUD), in order for the City of Auburn to receive the allocation related to the third funding round of Community Development Block Grant Coronavirus (CDBG-CV) from the CARES Act. This plan is amended to incorporate $541,197 of CDBG-CV funds to prevent, prepare for, and respond to the coronavirus (COVID-19). Of these CDBG-CV funds, the City is proposing that $494,660 will be allocated to Public Services, with the remaining $46,537 for program administration.

2. Summarize the objectives and outcomes identified in the Plan

This Action Plan Amendment allocates a total of $541,197 dollars in anticipated 2019 Community Development Block Grant Coronavirus funds (CDBG-CV), to support the Community Development Block Grant program. With the overall goal of preventing, preparing for, and responding to coronavirus, the following objectives and outcomes will be employed:

1. Support programs providing emergency subsistence and career support for low to moderate income Auburn residents
2. Support childcare assistance for families impacted by COVID-19.
3. Administer the Community Development Block Grant program to meet community needs related to COVID-19 and HUD requirements

4. Summary of Citizen Participation Process and consultation process

Consistent with the City of Auburn's amended Citizen Participation Plan, the amended 2019 Action Plan was made available for public review between December 2 and December 7, 2020 on the City of Auburn website and via email or mail, if requested.

Notice of CDBG-CV funds availability and the Amended 2019 Action Plan were posted on the City of Auburn Community Services webpage and in the Seattle Times on December 2, 2020.

5. Summary of public comments

No public comments were received.

6. Summary of comments or views not accepted and the reasons for not accepting them

No public comments were received.

7. Summary

No public comments were received.

AP-12 Participation - 91.401, 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation

Summarize citizen participation process and how it impacted goal-setting

The Amended 2019 Action Plan was available for public review between December 2, 2020 – December 7, 2020 on the City of Auburn website and by email or mail, if requested.

Notice of CDBG-CV funds availability and the Amended 2019 Action Plan were posted on the City of Auburn Community Services webpage and in the Seattle Times on December 2, 2020.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Newspaper Ad	Non-targeted/broad community		Any comments received will be reflected here.		

Table 1 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources - 91.420(b), 91.220(c)(1,2)

Introduction

The City of Auburn anticipates receiving an additional $541,197 in CDBG-CV funds, for a total to date CDBG-CV allocation of $913,002.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan $	Narrative Description
			Annual Allocation: $	Program Income: $	Prior Year Resources: $	Total: $		
CDBG-CV	public - federal	Admin and Planning Public Services	$913,002	0	0	$913,002		

Table 2 - Expected Resources – Priority Table

Discussion

The City of Auburn will use CDBG and CDBG-CV funds to support all eligible projects and activities that align with CDBG and CDBG-CV guidelines and regulations.

AP-35 Projects - 91.420, 91.220(d)

Introduction

Auburn's Annual Action Plan provides descriptions of proposals of how funds will be prioritized to achieve goals identified in the Consolidated Plan. Projects funded by the City will address the priority needs of providing assistance to prevent homelessness, ensure affordable housing and a suitable living environment. Projects and programs are selected through a competitive application process to ensure optimal quality services is provided to the community in use of the funds.

This amendment incorporates the following new projects:

#	Project Name
4	Public Services – Emergency Subsistence and Career Navigation
5	Public Services - Childcare

Table 3 – Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

The allocations proposed are based on the assessment of Auburn's needs, the resources available in the region, the availability of other funds also focusing on needs, and the purpose of CDBG-CV funds. Data from the City's most recent Community Needs Assessment was used in making a funding determination, as well as consultation with regional partners, other entitlement jurisdictions, and service providers in the community.

The City of Auburn released a Notice of Funding Availability on October 28, 2020, detailing the CV funds being made available and the application and review process. Staff were available to provide technical assistance through November 10, 2020, to any agency seeking to apply.

Applications were reviewed and scored by the City's Human Services Committee, with recommendations for funding approved at the November 23, 2020 Committee meeting. The following Public Service program areas are reflected in this amendment:

YWCA Eviction Prevention and Career Navigation: The combination of providing career and re-employment support along with rental assistance is an effective one to increase housing stability. The City of Auburn has seen a significant increase in unemployment filings and housing and economic insecurity since the onset of the pandemic. YWCA is committed to serving those who are disproportionally impacted by job loss or housing instability due to COVID-19. YWCA has demonstrated experience with managing federal funds.

YMCA Childcare Services (funded with a combination of CDBG-CV and 2020 reallocated funds): YMCA's Childcare program will serve Auburn families with school aged children, prioritizing BIPOC communities,

to provide social and developmental support for children and the opportunity for parents to maintain or increase work productivity. There is a high community need to for childcare supports as families navigate and respond to remote learning structures. The YMCA has demonstrated experience with managing federal funds.

Should additional CDBG-CV revenue be made available or one of the identified projects not fulfill their full contract amount, the additional resources shall be allocated to the following contingency project:

YMCA Eviction Prevention: This program would provide up to three months of rental assistance to households facing housing instability or eviction due to the COVID-19 crisis. The program would work to stabilize households to prevent eviction.

AP-38 Project Summary

Project Summary Information

1	**Project Name**	Emergency Subsistence
	Target Area	
	Goals Supported	End Homelessness Ensure Decent, Affordable Housing
	Needs Addressed	
	Funding	CDBG-CV: $246,805
	Description	Respond to the impacts of COVID-19 on Auburn residents by providing emergency subsistence support for low to moderate income renters or homeowners.
	Target Date	03/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	An estimated 150 low to moderate income households in Auburn will benefit from this activity.
	Location Description	n/a
	Planned Activities	
2	**Project Name**	Administration
	Target Area	
	Goals Supported	Planning and Administration
	Needs Addressed	
	Funding	CDBG-CV: $71,537
	Description	General CDBG-CV administration and project management
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	n/a
	Location Description	n/a
	Planned Activities	General planning and administration of the CDBG-CV programs include: management of all CDBG-CV related finances, contracting for services, all grant reporting, monitoring of subrecipients and providing guidance of program implementation in Auburn.

3	**Project Name**	COVID-Related Health Services
	Target Area	
	Goals Supported	
	Needs Addressed	
	Funding	CDBG-CV: $100,000
	Description	These funds will support COVID-related health services (testing and treatment) for Low to Moderate Income Individuals at a Community Healthcare Organization. Funds must be used to support Auburn residents.
	Target Date	12/31/2020
	Estimate the number and type of families that will benefit from the proposed activities	At least 100 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	Providing healthcare services which include testing and treatment for COVID-19.

4	**Project Name**	Eviction Prevention and Career Navigation
	Target Area	
	Goals Supported	End Homelessness Ensure Decent, Affordable Housing
	Needs Addressed	
	Funding	CDBG-CV: $374,660
	Description	Respond to the impacts of COVID-19 on Auburn residents by providing emergency subsistence support paired with career navigation services for low to moderate income renters experiencing housing instability as a result of COVID-19.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	At least 100 low to moderate income Auburn residents will have benefitted from the proposed activities.

	Location Description	n/a
	Planned Activities	Provide emergency subsistence support along with career navigation to residents facing housing instability, addressing both the immediate and long term financial needs.

5	**Project Name**	Childcare Assistance
	Target Area	
	Goals Supported	Ensure a Suitable Living Environment
	Needs Addressed	
	Funding	CDBG-CV: $120,000 CDBG 2020 Funds: $30,000
	Description	These funds will support a childcare program for Auburn families with school aged children impacted by COVID-19 to provide social and developmental support for children and the opportunity for parents to maintain or increase work productivity.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	At least 150 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	Providing a childcare program for low to moderate income families impacted by COVID-19.

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution 5568 (Tate)

Date:
December 15, 2020

Department:
Community Development

Attachments:
Resolution No. 5568
Proposed CDBG 2020 Annual Action Plan Amendment

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

Administrative Recommendation:

City Council to adopt Resolution No. 5568.

Background Summary:

On March 27, 2020, the U.S. Congress passed The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), also known as the CARES Act. The bill allocates $5 billion in supplemental Community Development Block Grant (CDBG) funding for grants to prevent, prepare for, and respond to the coronavirus (CDBG-CV).

In addition to making new CDBG-CV funds available, the Department of Housing and Urban Development (HUD) is allowing grantees to reallocate 2019 or 2020 program year CDBG funds to public services that respond to Coronavirus and lifting the 15% public service cap.

In addition to additional CDBG-CV funds that the City is expected to receive, staff identified $205,000 of 2020 CDBG funds that can be reallocated to this purpose.

This substantial amendment of the existing 2020 Action Plans is a requirement of HUD in order for the City of Auburn to reallocate the 2020 CDBG funds identified. The attached plan is amended to repurpose $205,000 of CDBG funds to prevent, prepare for, and respond to the coronavirus.

Through this resolution, the Mayor is provided the authority to implement administrative procedures necessary to carry out the directives of this plan.

Reviewed by Council Committees:

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

Meeting Date: December 21, 2020 Item Number: RES.D

RESOLUTION NO. 5568

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ADOPTING THE SUBSTANTIAL AMENDMENT TO THE 2020 COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN

WHEREAS, the City of Auburn was designated as an entitlement community by the U.S. Department of Housing and Urban Development (HUD) for its Community Development Block Grant (CDBG) Program; and

WHEREAS, the primary objective of the Consolidated Plan and CDBG Program is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-income and moderate-income; and

WHEREAS, on March 27, 2020, the U.S. Congress passed The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), also known as the CARES Act, which allocates $5 billion in supplemental CDBG funding for grants to prevent, prepare for, and respond to the coronavirus (CDBG-CV);

WHEREAS, to reallocate funds received, a substantial amendment must be made to the 2020 Annual Action Plan that serves as a federally required planning document to guide the City of Auburn's human service and community development efforts; and

WHEREAS, the planning process to develop the Consolidated Plan involved citizen participation and guidance from non-profit and governmental agencies serving low income residents in the community.

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

Section 1. Pursuant to the provisions of 24 CFR 91, the 2020 Annual Action Plan previously adopted by the City of Auburn City Council is amended, consistent with the attached Exhibit "A", reallocating approximately $205,000 of available CDBG funds for projects that are consistent with federal regulations and with the objectives and policies of the Auburn Community Development Block Grant Consolidated Plan, primarily to provide public services that prevent, prepare for, and respond to the coronavirus for low to moderate income Auburn residents.

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

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:

_____
Kendra Comeau, City Attorney

City of Auburn CDBG 2020 Annual Action Plan Amendment

Executive Summary

AP-05 Executive Summary - 91.200(c), 91.220(b)

1. Introduction

This substantial amendment of the 2019 Action Plan is a requirement of the U.S. Department of Housing and Urban Development (HUD), in order for the City of Auburn to receive the allocation related to the third funding round of Community Development Block Grant Coronavirus (CDBG-CV) from the CARES Act. This plan is amended to incorporate $541,197 of CDBG-CV funds to prevent, prepare for, and respond to the coronavirus (COVID-19). Of these CDBG-CV funds, the City is proposing that $494,660 will be allocated to Public Services, with the remaining $46,537 for program administration.

2. Summarize the objectives and outcomes identified in the Plan

This Action Plan Amendment reallocates a total of $205,000 dollars in 2020 Community Development Block Grant funds to respond to Coronavirus in the community utilizing Public Services. With the overall goal of preventing, preparing for, and responding to coronavirus, the following objectives and outcomes will be employed:

1. Support programs providing food assistance for low to moderate income Auburn residents, vulnerable to Coronavirus, living in Senior Affordable Housing properties.
2. Support programs providing both training for a path to employment and support to Auburn residents impacted by Coronavirus and entering a new field to maintain employment.
3. Support programs providing mental health services to Auburn youth experiencing homelessness that have been impacted by the Coronavirus.

4. Summary of Citizen Participation Process and consultation process

Consistent with the City of Auburn's amended Citizen Participation Plan, the amended 2020 Action Plan was made available for public review between December 2 and December 7, 2020 on the City of Auburn website and via email or mail, if requested.

The Amended 2020 Action Plan was posted on the City of Auburn Community Services webpage with notice provided in the Seattle Times on December 2, 2020.

5. Summary of public comments

No public comments were received.

6. Summary of comments or views not accepted and the reasons for not accepting them

No public comments were received.

7. Summary

No public comments were received.

Expected Resources

AP-15 Expected Resources - 91.420(b), 91.220(c)(1,2)

Introduction

The City of Auburn anticipates funding for the duration of the Consolidated Plan from

- CDBG
- City of Auburn General Fund allocation for Human Services

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan $	Narrative Description
			Annual Allocation: $	Program Income: $	Prior Year Resources: $	Total: $		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	631,937 ~~632,034~~	 0	 51,182	683,119 ~~683,216~~	 2,520,000	Resources anticipated based on 2020 entitlement
General Fund	public - local	Public Services	490,000	0	0	490,000	2,000,000	General fund allocation to human services in the community.

Table 1 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The City of Auburn relies on CDBG funds to support community and economic development projects and

activities in efforts to support low to moderate income populations in the community. However, CDBG funds are not the only source of funds the City uses to support public services and community projects and activities. The City's general funds are used to support public services in addition to CDBG funds.

CDBG funds do not require matching funds.

If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

Discussion

The City of Auburn will explore possibilities to utilize publicly owned land to address needs identified in the Consolidated Plan.

Annual Goals and Objectives

AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e)

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Affordable Housing	2020	2024	Affordable Housing Public Housing Homeless Non-Homeless Special Needs		Affordable Housing	CDBG: ~~$380,000~~ $160,000	~~Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit: 5~~ Households Assisted Homeowner Housing Rehabilitated: ~~65~~ 40 Household Housing Unit
2	Ending Homelessness	2020	2024	Homeless		Ending Homelessness	CDBG: $265,000 ~~70,000~~	Public service activities other than Low/Moderate Income Housing Benefit: 165 Persons Assisted Public Service Activities to respond to COVID-19 in the community ($205,000): 173 persons assisted
3	Community and Economic Development	2020	2024	Non-Homeless Special Needs Non-Housing Community Development		Community and Economic Development	CDBG: $118,216	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 200 Persons Assisted
4	Planning and Administration	2020	2024				CDBG: $109,903	Other: 0 Other

Table 2 – Goals Summary

Goal Descriptions

1	**Goal Name**	Affordable Housing
	Goal Description	The City of Auburn will engage in housing activities, collaborations, and partnerships to enhance opportunities for the creation and preservation of affordable housing. The City will plan for and support fair housing strategies and initiatives designed to affirmatively further fair housing choice, and to increase access to housing and housing programs.
2	**Goal Name**	Ending Homelessness
	Goal Description	The City of Auburn will support Public Service activities that work toward the following outcomes: 1) reduce the number of households becoming homeless; 2) reduce the length of time that households are homeless; 3) increase the rate of exits to permanent housing; and 4) reduce the number of households that re-enter the homeless system after exit to permanent housing.
3	**Goal Name**	Community and Economic Development
	Goal Description	In an effort to meet the need of Auburn's economic and demographic growth the City intends to fund programs and activities that will enhance the economy, accessibility, safety, and physical appearance of neighborhoods. Activities that would be eligible for funding include fair housing public services, public infrastructure and ADA improvements for public facilities. These investments help to ensure equitable opportunities for good health, happiness, safety, self-reliance and connection to community.
4	**Goal Name**	Planning and Administration
	Goal Description	General administration and project management

AP-35 Projects - 91.420, 91.220(d)

Introduction

Auburn's Annual Action Plan provides descriptions of proposals of how funds will be prioritized to achieve goals identified in the Consolidated Plan. Projects funded by the City will address the priority needs of providing assistance to prevent homelessness, ensure affordable housing and a suitable living environment. Projects and programs are selected through a competitive application process to ensure optimal quality services is provided to the community in use of the funds.

#	Project Name
1	Housing Repair
2	Healthpoint
3	~~Employment Training Program~~
4	Sidewalk Accessibility Improvements
5	~~Affordable Housing Capital Improvements~~
6	Planning and Administration
7	COVID-Related Food Assistance
8	COVID-Related Behavioral Health Services
9	COVID-Related Employment Services

Table 3 – Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

The allocations proposed are based on the assessment of Auburn's needs, the resources available in the region, the availability of other funds also focusing on needs, and the purpose of Consolidated Plan funds.

Changes have been made to allocations and goals to make funds available for responding to the effects of COVID-19 on low to moderate income Auburn residents. These funds utilize the flexibilities that HUD provided lifting the Public Services cap for programs that prevent, prepare for, or respond to Coronavirus.

Should CDBG revenues exceed the proposed amount, the additional resources shall be allocated in accordance to the following guidelines:

- Fill gaps in human services primarily healthcare, homeless prevention and intervention and affordable housing accessibility.
- Increase funding for community development projects and activities including housing, community facilities and economic development.

If increases are not significant enough to enhance projects or activities funds may be placed in

contingency for programming later in the year or the following program year.

Should CDBG revenues come in lower than anticipated; the City will continue with its planned policy and to the extent allowed reduce funding allocations in homeowner rehabilitation projects and administrative activities.

Should CDBG revenues come in less than originally proposed, the City will continue managing the programs with decreased resources to the extent possible and reduce funding allocations in administrative activities and not public services.

AP-38 Project Summary

Project Summary Information

1	**Project Name**	Housing Repair
	Target Area	
	Goals Supported	Affordable Housing
	Needs Addressed	Affordable Housing
	Funding	CDBG: $~~350,000~~160,000
	Description	Maintain the affordability of decent housing for low-income Auburn residents by providing repairs necessary to maintain suitable housing for low income Auburn homeowners.
	Target Date	12/31/2020
	Estimate the number and type of families that will benefit from the proposed activities	An estimated ~~65~~ 40 low to moderate income families will benefit from the housing repair program. As the City's largest homeless prevention program, housing repair ensures the sustainability of a safe home for some of Auburn's most vulnerable residents. Of the ~~65~~ 40 low to moderate income residents who apply for the program, over half of them are of the senior and disabled population.
	Location Description	n/a
	Planned Activities	Activities include minor home repairs.
2	**Project Name**	Healthpoint
	Target Area	
	Goals Supported	Ending Homelessness
	Needs Addressed	Homeless Prevention and Intervention
	Funding	CDBG: $60,000
	Description	Providing healthcare services which include medical and dental to 150 or more low to moderate income, Auburn residents. This project is a public service activity.

	Target Date	12/31/2020
	Estimate the number and type of families that will benefit from the proposed activities	At least 150 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	
4	**Project Name**	Sidewalk Accessibility Improvements
	Target Area	
	Goals Supported	Community and Economic Development
	Needs Addressed	Ensure a Suitable Living Environment
	Funding	CDBG: $ 118,216
	Description	Provide sidewalk ADA improvements in low- to moderate-income areas of Auburn, improving accessibility, safety, and community connectedness.
	Target Date	12/31/2020
	Estimate the number and type of families that will benefit from the proposed activities	At least 200 low to moderate income Auburn residents will benefit from the improvements.
	Location Description	n/a
	Planned Activities	Planned activities include sidewalk improvements to install missing sections or ADA-compliant curb ramps in the Forrest Villa area and on 2nd St SE between N St SE and Pike St SE
5	**Project Name**	~~Affordable Housing Capital Improvements~~
	Target Area	
	Goals Supported	~~Affordable Housing~~

	Needs Addressed	~~Ensure a Suitable Living Environment.~~
	Funding	~~CDBG: $30,000~~
	Description	~~Make funds available through an RFP process to nonprofit affordable housing providers in the City of Auburn for property improvements.~~
	Target Date	~~12/31/2019~~
	Estimate the number and type of families that will benefit from the proposed activities	~~5 low-income households will benefit from the proposed improvements.~~
	Location Description	~~n/a~~
	Planned Activities	

6	**Project Name**	COVID-Related Food Assistance
	Target Area	
	Goals Supported	Ending Homelessness
	Needs Addressed	Food Access
	Funding	CDBG: $75,000
	Description	YMCA's Food assistance program is designed to deliver food to Auburn's senior population living in local low-income housing communities. This basic needs service is critical to seniors in Auburn and will provide additional and much needed food access to seniors in King County Housing Authority locations, especially as more Public Health restrictions are instituted and virus spread continues.
	Target Date	12/31/2021

	Estimate the number and type of families that will benefit from the proposed activities	At least 100 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	Meal distribution to low income housing complexes in Auburn

7	**Project Name**	COVID-Related Behavioral Health Services
	Target Area	
	Goals Supported	Ending Homelessness
	Needs Addressed	Homeless Intervention
	Funding	CDBG: $50,000
	Description	Funds will be used to provide additional staff capacity to provide mental health support to young adult shelter clients impacted by COVID-19. Access to mental and behavior health services has been identified as a area of importance by the Needs Assessment. Isolation and quarantining measures has exacerbated need for mental health resources.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	At least 60 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	

8	**Project Name**	COVID-Related Employment Services
	Target Area	
	Goals Supported	Ending Homelessness
	Needs Addressed	Homeless Prevention and Intervention
	Funding	CDBG: $50,000
	Description	Employment support is critical during this time when Auburn is seeing a high unemployment rate and residents will need training for a new field for employment. Orion will provide both training for a path to employment and support to those entering a new field to maintain employment.
	Target Date	12/31/2021
	Estimate the number and type of families that will benefit from the proposed activities	At least 13 low to moderate income Auburn residents will have benefitted from the proposed activities.
	Location Description	n/a
	Planned Activities	

AP-50 Geographic Distribution - 91.420, 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

The City of Auburn intends on distributing funds throughout the jurisdiction.

Geographic Distribution

Target Area	Percentage of Funds

Table 4 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Due to the fact that all areas of Auburn have low to moderate income families dispersed throughout the entire City, the City intends on investing throughout the entire jurisdiction to ensure that all populations throughout the region have access to beneficial programs and housing opportunities.

Discussion

Due to the fact that all areas of Auburn have low to moderate income families dispersed throughout the entire City, the City intends on investing throughout the entire jurisdiction to ensure that all populations throughout the region have access to beneficial programs and housing opportunities.

AP-85 Other Actions - 91.420, 91.220(k)

Introduction

The City of Auburn will continue to work with service providers throughout the region in coordination to develop systems and strategies to promote their efforts in providing optimal, easily accessible services. The City will work to reduce the number of families in poverty, sustain relationships with employment training agencies, and work to preserve and increase the affordable housing stock in our community.

Actions planned to address obstacles to meeting underserved needs

By establishing a strong foundation of networks between local service providers, stakeholders and government agencies through committees and coalitions, the City will work in partnership to address obstacles and ameliorate barriers to meeting underserved needs. The collaborated organizations will develop detailed strategic plans that will delegate tasks, build systems and ongoing assessment of service delivery.

Actions planned to foster and maintain affordable housing

The City will continue to maintain the affordability of decent housing for low income Auburn residents by allocating ~~over $300,000~~$160,000 of CDBG funds to the City's Housing Repair Program. The program provides emergency repairs necessary to maintain safe housing for at least ~~65~~ 40 Auburn homeowners, many of whom are senior citizens and/or are experiencing barriers to safely accessing their homes due to physical disabilities.

In addition to Auburn's Housing Repair program, the City will maintain affordable housing by continuing to engage and partner with coalitions, committees and other government agencies to integrate and enhance efforts on the issue.

Auburn has been participating in multiple robust regional efforts to coordinate affordable housing activities in King County. One of these efforts, The South King Housing and Homelessness Partners (SKHHP) is a coalition formed by an interlocal agreement between the jurisdictions of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Normandy Park, Renton, Tukwila, and King County. The agreement allows for South King County jurisdictions to work together and share resources in order to effectively address affordable housing and homelessness. This collaborative model is based on similar approaches used in Snohomish County, East King County, and other areas of the country. The purpose of the coalition is to increase the available options for South King County residents to access affordable housing and to preserve the existing affordable housing stock.

Additionally, the City of Auburn has been an active participant in the recently formed Affordable Housing Committee of the Growth Management Planning Council (GMPC), with a City Councilmember sitting on the Committee as a voting member. The Affordable Housing Committee serves as a regional advisory body to recommend action and assess progress toward implementing the Regional Affordable Housing Task Force (RAHTF) Five Year Action Plan. The Committee functions as a point in coordinating

and owning accountability for affordable housing efforts across King County.

Actions planned to reduce lead-based paint hazards

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

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

Actions planned to reduce the number of poverty-level families

The City of Auburn's planned actions to reduce the number of poverty- level families within the context of this Annual Action Plan include but are not limited to:

- ~~Allocating $10,000 to employment and training programs~~
- Allocating $60,000 to healthcare services targeted at families who are uninsured or underinsured
- Prioritizing Public Service COVID response for low to moderate income households in Auburn, including food assistance for low-income seniors, behavioral health services for young adults experiencing homelessness, and employment services to help support re-training and re-employment. Additionally, $30,000 of 2020 CDBG funds have been allocated to COVID-related childcare services through a 2019 AAP Amendment.
- Participate and partner with coalitions, committees and agencies that provide antipoverty services to develop and enhance strategies and efforts to reduce poverty level families
- Supporting the development and sustainability of affordable multi-family housing in Auburn

In addition, the city will continue to support and fund programs serving families living in poverty through a competitive human services funding process.

Actions planned to develop institutional structure

The City's planned actions to address the gaps and weaknesses identified in the strategic plan include:

- Maintaining partnerships with and participating in the South King County Housing and

Homelessness Partnership, All Home of King County and other regional human service providers, coalitions and committees who address homeless issues. The City will also continue to work collaboratively with partnering organizations and groups to integrate and enhance services to provide optimal services to individuals and families currently experiencing or at risk of homelessness. In addition the City plans to allocate $250,000 to emergency shelters and homelessness intervention services, and more than $60,000 to emergency services such as food, financial assistance, clothing and healthcare.

- Take a comprehensive approach to consolidated and comprehensive planning to include all internal City departments, commissions, committees and task forces.

Actions planned to enhance coordination between public and private housing and social service agencies

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

In 2016 the City of Auburn started participating in Affordable Housing Week through the Housing Development Consortium along with other public and private housing agencies in King County to continue our partnerships in providing affordable housing in the region. The City will continue its participation in this annual event and look for other similar opportunities to raise build partnerships to support the preservation and enhanced affordability of housing in our community.

Discussion

The expressed goal of the City's Consolidated Plan is to reduce the number of people living in poverty within Auburn. The City intends to give funding priority to programs that in addition to complying with federal regulations and address a priority a outlined in the Consolidated Plan are consistent with all of the goals and objectives identified.

Program Specific Requirements

AP-90 Program Specific Requirements - 91.420, 91.220(l)(1,2,4)

Introduction

The City of Auburn does not anticipate receiving any program income during the 2020 Annual Action Plan year.

Community Development Block Grant Program (CDBG)
Reference 24 CFR 91.220(l)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan
3. The amount of surplus funds from urban renewal settlements
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.
5. The amount of income from float-funded activities

Total Program Income

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5569 (Tate)

Date:
December 15, 2020

Department:
Community Development

Attachments:
Resolution No. 5569
Proposed 2021 VRFA Fee Schedule reflecting a 1% increase in all fees

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

Administrative Recommendation:

City Council to adopt Resolution No. 5569.

Background Summary:

The Valley Regional Fire Authority (VRFA) was established in 2007 under RCW 52.26 as a Fire Authority that serves the cities of Auburn, Algona, and Pacific. As a Fire Authority VRFA operates as a separate municipal corporation, with independent taxing authority, and within an independent taxing district.

While VRFA is a separate Fire Authority and is organizationally independent from the City of Auburn, VRFA continues to have a role in reviewing development proposals and conducting inspections during the construction process. Within VRFA it is the Fire Marshal's Office that performs these functions.

While VRFA has taxing authority within its jurisdictional boundary, tax payers do not fund all services offered by VRFA. In some instances there are fees charged to customers who are seeking direct service, e.g. a permit to construct a commercial building. In other words, permit customers pay a substantial portion of the direct service they are seeking, as opposed to the service being subsidized across the taxing district. Stated in yet another way, a residential tax payer who pays a portion of their property taxes to VRFA is generally not providing a significant level monetary contribution to a commercial real estate proposal or a new residential subdivision.

Since the Fire Authority was established in 2007, VRFA has collected fees for reviewing development plans and conducting construction inspections. In Auburn, VRFA fees are collected by the City and distributed to VRFA. This practice was put in place in order to ensure that Auburn could achieve a one-stop permitting shop. Instead of sending customers to a VRFA office to pay fees and apply for separate fire permits, customers can submit, pay and pick up permits at the City's Permit Center. More times than not, the customer never knows that they are interacting with, and paying, separate governmental entities.

2021 VRFA fee schedule is adjusted for the cost of living increase of 1.0% based on the semi-annual Seattle Tacoma Bellevue CPI-W experienced by the region.

While VRFA is a separate agency, with a separate Governance Board that has authority to establish its own service fees, the Auburn City Council has a role in endorsing fees that are

collected by the City and distributed to other agencies (similar to Council's role in reviewing school district fees and taking action to authorize the collection of these external agency fees). Typically, City Council would provide this endorsement through action of a Resolution which then enables procedural efforts to occur that facilitate collection of the relevant fees and fee types.

The materials attached to this memo have been prepared by VRFA. VRFA staff will be present during the December 21, 2020 City Council meeting to answer any questions.

Reviewed by Council Committees:

Councilmember:	Brown	**Staff:**	Tate
Meeting Date:	December 21, 2020	Item Number:	RES.E

RESOLUTION NO. 5569

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ENDORSING USE OF THE 2021 VALLEY REGIONAL FIRE AUTHORITY FEE SCHEDULE AS ADOPTED BY THE VRFA BOARD OF GOVERNANCE

WHEREAS, the Valley Regional Fire Authority (VRFA) was established in 2007 under the authority of RCW 52.26 and operates as a separate municipal corporation, with independent taxing authority, and within an independent taxing district; and

WHEREAS, VRFA serves the cities of Algona, Auburn, and Pacific and is guided by a Governance Board comprised of elected officials representing each city; and

WHEREAS, the VRFA Governance Board has adopted an updated fee schedule for 2021 the covers a portion of the direct cost of permit review, plan review, and inspection services performed out of the Fire Marshal's office; and

WHEREAS, the City of Auburn collects direct service fees on behalf of VRFA in order to support the concept of a one-stop-shop for development and permitting services; and

WHEREAS, in order to collect direct service fees on behalf of VRFA, the City of Auburn must incorporate VRFA fees into city procedures, city permitting software systems, and city financial systems.

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

Section 1. The Valley Regional Fire Authority Fee Schedule is hereby adopted as set forth in the attached “Exhibit A” and

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

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon and on January 1, 2021.

Dated and Signed: _____

CITY OF AUBURN

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Valley Regional Fire Authority 2021 Fee Schedule

Effective January 1, 2021 and will remain in effect unless amended by the VRFA Board of Governance

	Activity	Fee
1	**Building Department Review (Includes Initial Inspection)**	
1.1	Commercial Occupancy Review	35% of Jurisdictional Permit Fee [1]
1.2	Multi-Family Occupancy Review (R2)	20% of Jurisdictional Permit Fee [1]
1.3	Other Permit Fees (mechanical, plumbing etc...)	$229.85 [3]
1.4	Revisions to previously reviewed plans	$229.85 [3]
1.5	Single Family Occupancy Review (R3)	15% of Jurisdictional Fee [2]
2	**Land Use Reviews**	
2.1	Boundary Line Adjustment	$114.93 [3]
2.2	Civil Reviews (FAC, hydrant placement, fire flow, fire department access, grading)	$229.85 [3]
2.3	Preliminary Plat and Plat Reviews (subdivisions)	$229.85 [3]
2.4	Other Permit Fees (miscellaneous, administrative, etc...)	$114.93 [3]
2.5	SEPA review	$229.85 [3]
2.6	Short Plat Review	$229.85 [3]
2.7	Variances	$114.93 [3]
2.8	Water Availability Reviews	$114.93 [3]
3	**Fire Protection Systems (Includes Plan Review and Initial 2 Inspections)** [4]	
3.1	Commercial Automatic Fire Protection System (Fire Sprinkler)	$378.84+ $0.75 per sprinkler head over 10 heads [3]
3.2	Commercial and Residential Automatic Fire Protection System (Underground Fire Sprinkler Line) (WAC 105.7.20)	$378.84 per system / building [3]
3.3	Commercial Automatic or Manual Fire Alarm Systems	$378.84 + $5.00 per device over 5 devices [3]
3.4	Commercial Kitchen Fire Protection System	$378.84 + $0.75 per sprinkler head over 10 heads [3]
3.5	Commercial: Other Fire Protection Systems (clean agent, FM200, wet or dry chemical, CO2, foam, mist, inert gas, and other systems)	$378.84 + $0.75 per sprinkler head over 10 heads [3]
3.6	Emergency Responder Radio Coverage System (DAS)	$378.84 +$0.75 per device [3]
3.7	Fireworks Display Permit	$378.84
3.8	Fireworks Sales Permit without a tent	$100.00 [3, 10]
3.9	Fireworks Sales Permit with a tent	$100 + $277.58=$377.58 [3,10]
3.10	Other Miscellaneous Plan Review not listed	$378.84 [3]

	Activity	Fee
3.11	Over the Counter Permit (fire sprinkler with less than 10 sprinkler heads, or fire alarm with less than 5 devices)	$114.93 [3]
3.12	Residential (R3) Fire Sprinkler System	$114.93 + $0.75 per device over 10 devices [3]
	Spray Booth Installation	
3.13	Spray Booth Installation (MEC or TEN)	$114.93 [3]
3.14	Spray Booth Fire Protection System	$378.84 + $0.75 per device over 10 devices [3]
3.15	Spray Booth Fire Alarm System	$378.84+ $5.00 per device over 5 devices [3]
4	Other Fire Permits (Includes Plan Review and Initial 2 inspections) [4]	
4.1	Battery Systems	$689.57 [3]
4.2	New Business License Review	Included with Fire Benefit Charge
4.3	Compressed Gases	$689.57 [3]
4.4	Cryogenic Fluids	$689.57 [3]
4.5	Fire Pump & Equipment	$689.57 [3]
4.6	Flammable and Combustible Liquids (including above ground tanks, below ground tanks, dip tanks, etc…) installation and repair	$689.57 [3]
4.7	Commercial Flammable and Combustible Liquids tank removal	$378.84 [3]
4.8	Hazardous Materials Facility	$689.57 [3]
4.9	Industrial Ovens	$689.57 [3]
4.10	LP Gas Commercial	$689.57 [3]
4.11	LP Gas Residential	$378.84 [3]
4.12	Marijuana Extraction Systems (WAC 105.7.19)	$689.57 [3]
4.13	Commercial Heating Tank Removal	$378.84 [3]
4.14	Residential Home Heating Tank Removal	$114.93 [3]
4.15	Solar Photovoltaic Power Systems, Residential	$418.21 [3]
4.16	Solar Photovoltaic Power Systems, Commercial	$689.57 [3]
4.17	Temporary Tent/Membrane Structure > 400 square feet	$229.85 [3]
4.18	Working without a permit or ahead of the permit	Double the permit and inspection fee
5	Inspection Fees	
5.1	Initial Inspection	Included in the permit fee
5.2	1st Re-inspection	Included in the permit fee
5.3	2nd Re-inspection	$229.85 for first 2 hours [3]
5.4	Any subsequent (after 2nd) re-inspection	$229.85 for first 2 hours [3]

	Activity	Fee
5.5	After Hours Inspection (Outside of normal business hours)	$172.39 per hour (2 hour minimum) [3,8,9]
5.6	Progressive Inspections (beyond the first 2 inspections)	$114.93 per hour (2 hour minimum) [3]
5.7	Re-inspection (due to a failure to cancel appointment or work not ready for inspection at time of appointment)	$114.93 per hour (2 hour minimum) [3]
6	Pre-Application Fees	
6.1	Pre-Application Fees	Included with Fire Benefit Charge
7	Consultant Fees	
7.1	Use of Outside Consultants for Plan Review and Inspection, and Rapid Access Equipment	Actual Costs
8	Other Fire Authority Fees	
8.1	Fire Ambulance Transport Fee	$1,745.67
8.2	Fire Ambulance Transport Mileage Fee	$24.55 per mile
	False Alarm Responses (within a calendar year)	
	Preventable Nuisance or Malfunction Alarm - 1st and 2nd violation	No Penalty
	Preventable Nuisance or Malfunction Alarm - 3rd violation	$77.04
	Preventable Nuisance or Malfunction Alarm - 4 or more violations	$154.07
	Public Records Requests RCW70.020.010 & WAC 246-08-400	
	Description	Rate
	General Records - paper copies	$0.15 per page
	General Records - electronic copies	$0.10 per page + cost of media
	Medical Incident Reports - Clerical Fee	$25.00 per report
	Medical Incident Reports - paper copies - Pages 1-30	$1.12 per page
	Medical Incident Reports - paper copies - Pages 31+	$0.84 per page
	Medical Incident Reports - electronic copies	$0.10 per page + cost of media
	Records mailed or shipped	Actual cost of postage and container
	Video and audio tapes	Actual cost to reproduce

10	OPERATIONAL PERMITS	
The International Fire Code 105.6 Required Operational Permits authorizes the fire code official to issue		
	Permit type	Fee
10.1	Aerosol products	Included with the Fire Benefit Charge
10.2	Amusement building	Included with the Fire Benefit Charge
10.3	Aviation facilities	Included with the Fire Benefit Charge
10.4	Carbon dioxide systems	Included with the Fire Benefit Charge
10.5	Carnivals and fairs	Included with the Fire Benefit Charge
10.6	Combustible dust producing operations	Included with the Fire Benefit Charge
10.7	Combustible fibers	Included with the Fire Benefit Charge
10.8	Compressed gases	Included with the Fire Benefit Charge
10.9	Cover and open mall buildings	Included with the Fire Benefit Charge
10.10	Cryogenic fluids	Included with the Fire Benefit Charge
10.11	Cutting and welding	Included with the Fire Benefit Charge
10.12	Dry cleaning	Included with the Fire Benefit Charge
10.13	Exhibits and trade shows	Included with the Fire Benefit Charge
10.14	Explosives	Included with the Fire Benefit Charge
10.15	Flammable and combustible liquids	Included with the Fire Benefit Charge
10.16	Fruit and crop ripening	Included with the Fire Benefit Charge
10.17	Fumigation and insecticidal fogging	Included with the Fire Benefit Charge
10.18	Hazardous materials	Included with the Fire Benefit Charge
10.19	High piled storage	Included with the Fire Benefit Charge
10.20	Hot work operations	Included with the Fire Benefit Charge
10.21	Industrial ovens	Included with the Fire Benefit Charge
10.22	Lumber yards and woodworking plants	Included with the Fire Benefit Charge
10.23	Liquid or gas fueled vehicles or equipment in assembly buildings	Included with the Fire Benefit Charge
10.24	Liquid Petroleum (LP) gas	Included with the Fire Benefit Charge
10.25	Magnesium	Included with the Fire Benefit Charge
10.26	Miscellaneous combustible storage (tires, empty packing cases, rubber)	Included with the Fire Benefit Charge
10.27	Motor fuel dispensing facilities	Included with the Fire Benefit Charge
10.28	Organic coatings	Included with the Fire Benefit Charge
10.29	Place of assembly	Included with the Fire Benefit Charge
10.30	Private fire hydrants	Included with the Fire Benefit Charge
10.31	Refrigeration equipment	Included with the Fire Benefit Charge
10.32	Repair garages and motor fuel dispensing facilities	Included with the Fire Benefit Charge
10.33	Spraying or dipping operation using flammable or combustible liquids or powders	Included with the Fire Benefit Charge
10.34	Storage of tires, scrap tires, and by-products or rebuilding plants	Included with the Fire Benefit Charge
10.35	Waste handling	Included with the Fire Benefit Charge
10.36	Wood products	Included with the Fire Benefit Charge

10.37	Commercial kitchens with type I or type II hoods (ACC 10.36A.025)	Included with the Fire Benefit Charge

Explanatory notes:
1. The VRFA establishes its review and inspection fees on a percentage of the permit fee assessed by the authority having jurisdiction. Using a percentage of the jurisdictional fee as the basis of VRFA fees eliminates the need to adjust the VRFA fee schedule every time a jurisdictional fee changes.

2. The fee only applies to single family occupancies that require fire protection systems.

3. Hourly rate is based on the direct costs of VRFA staff time, salary, benefits, overhead, administrative costs, and resources.

4. Includes plan review and first two inspections.

5. Preventable nuisance and malfunction false alarms exist to reduce unwarranted calls that remove emergency apparatus from service. Though there is no penalty for 1st and 2nd violations, it provides the opportunity for the VRFA to educate owners about any mechanical problems within a system that may not be the fault of occupancy tenants. It further grants the opportunity for repair technicians to correct any deficiencies that may exist. Subsequent false alarms incur a penalty in an attempt to encourage needed repairs of the associated systems.

6. The VRFA Fire Marshal is authorized to reduce ~~or waive~~ any fees for permits. In compelling cases where the applicant - the party responsible for payment of such fees - is an organization exempt from taxation under 26 USC 501(c)(3), and where the permit relates directly to the provision of charitable services to residences of the VRFA service area, the VRFA Fire Marshal is vested with discretion to reduce any fees for permits, publications, and actions by up to 50%.

7. Permits that are not completed and no project improvements are made can, in writing, ask for the inspection fees to be refunded.

8. The VRFA will attempt to accommodate a client's requests for inspections outside of normal working hours. If there is not an inspector available, the request may be denied. If a client requests such inspection and the inspection cannot be completed for any of the reasons outlined above, the Department shall retain the minimum inspection fee and is authorized to deny any future requests. A 24 hour notice for cancellations is required for refund of fees.

9. After hour inspection fees are charged when an inspection is performed outside of normal work hours at the client's request.

10. Fees in accordance to RCW 70.77.555

AGENDA BILL APPROVAL FORM

Agenda Subject:
Resolution No. 5570 (Tate)

Date:
December 15, 2020

Department:
Community Development

Attachments:
Resolution No. 5570 2021 WRIA 9 Legislative Priorities
Exhibit A - 2021 WRIA 9 Legislative Priorities

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

Administrative Recommendation:

City Council to adopt Resolution No. 5570.

Background Summary:

The materials attached to this memo have been prepared by WRIA 9. The City of Auburn is a voting member of WRIA 9. Adoption of Resolution 5570 ensures that Auburn's voting member is lending support that is endorsed by the full City Council.

Reviewed by Council Committees:

Councilmember: Brown **Staff:** Tate

Meeting Date: December 21, 2020 Item Number: RES.F

RESOLUTION NO. 5570

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ENDORSING THE 2021 WATERSHED RESOURCE INVENTORY AREA (WRIA) 9 STATE LEGISLATIVE PRIORITIES

WHEREAS, the City of Auburn is one of 17 local government partners ("partners") who collectively share interest in and responsibility for addressing long-term watershed planning and conservation of the aquatic ecosystems and floodplains of the Green River, Duwamish River, and Central Puget Sound Watersheds ("WRIA 9"); and

WHEREAS, in March 1999, the National Oceanic and Atmospheric Administration (NOAA) Fisheries listed the Puget Sound Chinook salmon evolutionary significant unit, including the Green River populations in WRIA 9, as a threatened species under the Endangered Species Act (ESA); and

WHEREAS, the WRIA 9 partners recognize participating in an interlocal agreement ("ILA") and implementing priorities in the WRIA 9 Plan demonstrates their commitment to proactively working to address the ESA listing of Chinook salmon; and

WHEREAS, The City of Auburn is a partner to the ILA to jointly fund implementation and adaptive management of the WRIA 9 Salmon Habitat Plan through 2025; and

WHEREAS, an essential ingredient for the development and implementation of an effective recovery program is coordination and cooperation among federal, state, and local agencies, tribes, businesses, researchers, non-

governmental organizations, landowners, citizens, and other stakeholders as required; and

WHEREAS, if insufficient action is taken at the local and regional level, it is unlikely Chinook salmon populations will improve and it is possible the federal government could list Puget Sound Chinook salmon as an endangered species, thereby decreasing local flexibility; and

WHEREAS, federal and state funding of critical habitat and pollution control programs is essential to salmon and orca recovery in Puget Sound.

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

Section 1. The City Council of the City of Auburn hereby ratifies the 2021 WRIA 9 State and Federal Legislative Priorities for Puget Sound Watershed Health and Salmon Habitat Recovery. Ratification is intended to convey the City of Auburn's approval and support for funding federal and state level programs that are essential to local and regional salmon recovery efforts.

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

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures.

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Kendra Comeau, City Attorney

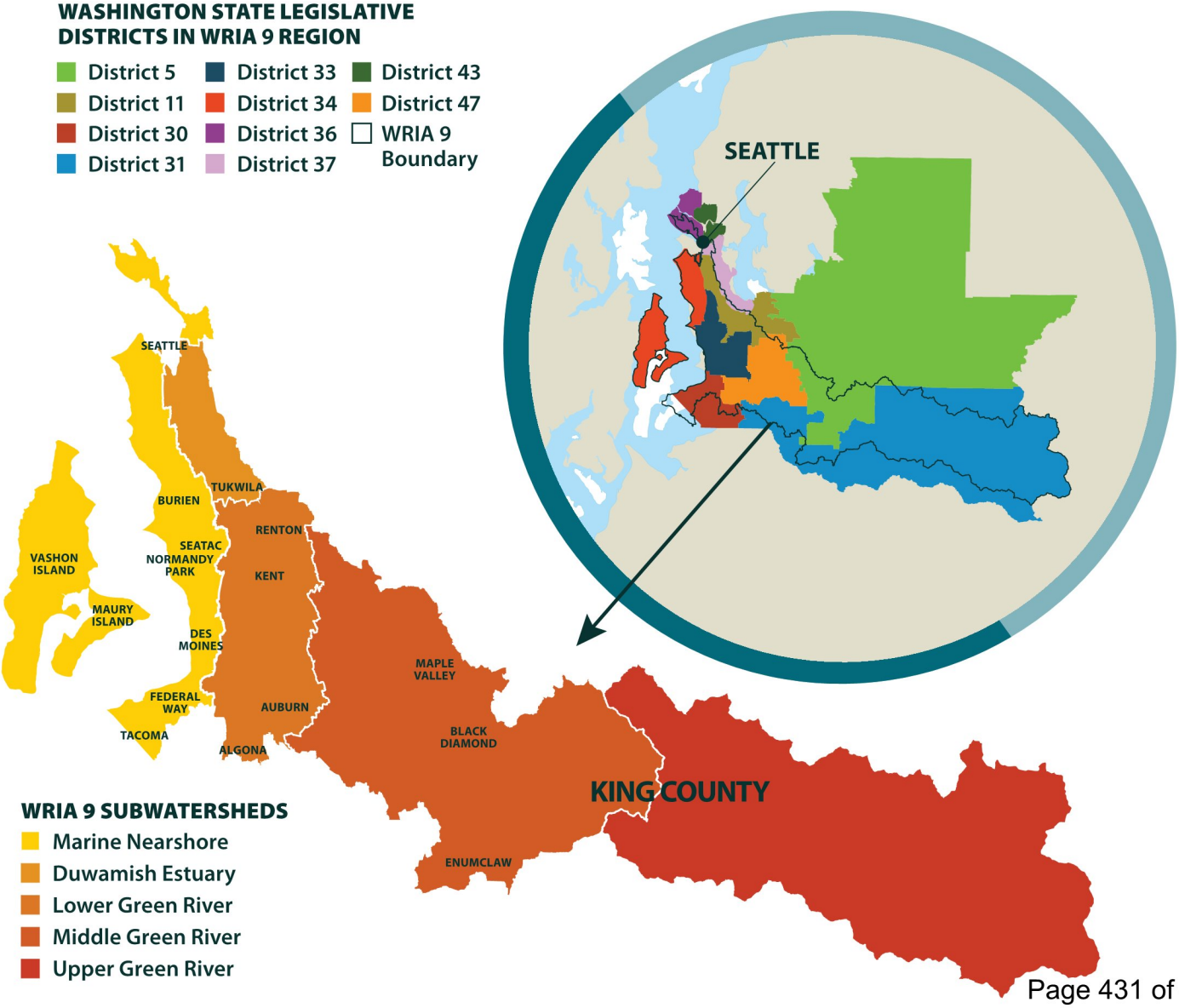
2021 STATE PRIORITIES

For Puget Sound Watershed Health and Salmon Habitat Recovery

Making Our Watershed Fit For A King
Green / Duwamish & Central Puget Sound

A Critical Habitat Programs

- Support Federal efforts to expedite planning, design, and construction of downstream fish passage facility at Howard Hanson Dam.
- Puget Sound Acquisition and Restoration (PSAR): $69.9 million
- Estuary and Salmon Restoration Program (ESRP): $20 million
- Salmon Recovery Funding Board (SRFB): $80 million state, $50 million federal match
- Floodplains by Design (FbyD): $70 million
- Brian Abbott Fish Barrier Removal Board: $70 million
- Family Forest Fish Passage Program: $10 million
- Washington State Department of Transportation Fish Passage Barrier Projects: $726 million
- Stormwater Financial Assistance Program: $52.7 million
- Chemical Action Plan (CAP) implementation: $6.5 million
- Centennial Clean Water Program: $80 million
- Water Pollution Control Revolving Account: $315 million, $15 million state match
- Clean Up Toxic Sites - Puget Sound: $6.6 million



B Southern Resident Orca Whale Recovery

- Support increasing Chinook salmon abundance by significantly increasing funding for protecting and restoring habitat.
- Accelerate implementation of habitat restoration projects in the Green/Duwamish and Central Puget Sound Watershed and throughout Puget Sound.
- Reduce stormwater threats and accelerate cleanup of toxics that are harmful to orcas.



C Toxics Cleanup

- Protect Model Toxics Control Act funds from diversion to purposes other than toxic pollution cleanups and prevention and fully fund the Department of Ecology's ranked Remedial Action Grant project list. Cleanup pursuant to MTCA must be guided by pro-equity policy practices and be culturally responsive.



? For more information about these priorities please contact:

Doug Osterman, WRIA 9 Salmon Recovery Manager, Green/Duwamish Central Puget Sound Watershed (WRIA 9)
206-477-4793 doug.osterman@kingcounty.gov govlink.org/watersheds/9/



2009_10290E_WRIA9_State_Priorities_Fact-Sheet.ai