City of Bothell™

Council Chambers, 18415 101st Ave NE, Bothell, WA

City Council Regular Meeting Agenda
Tuesday, December 17, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

Members of the Staff: City Manager Jennifer Phillips, Assistant City Manager Kellye Mazzoli, Assistant to the City Manager Becky Range, City Attorney Paul Byrne, Public Works Director Erin Leonhart, Finance Director Chris Bothwell, Community & Economic Development Director Michael Kattermann, Parks & Recreation Director Nik Stroup, Human Resources Director Mathew Pruitt, Information Services Director Joe Sherman, Police Chief Ken Seuberlich, Fire Chief Bruce Kroon, City Clerk Laura Hathaway

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1. Call to Order, Roll Call, Pledge of Allegiance

2. Meeting Agenda Approval

3. Public Engagement Opportunities

4. Special Presentation

   a. Recognition of Andy Rheaume, outgoing Mayor and Councilmember

5. City Manager/Council Committee Reports

   a. Local Consent for Refugee Resettlement Efforts in Washington State

6. Visitor Comment

   At this portion of the meeting the Mayor will invite visitor comment. Each speaker will be granted 3 minutes.

7. Consent Agenda

Pgs. 5-12

a. **City Council Meeting Minutes for October 8 and 15, 2019**
   Recommended Action: Approve the City Council meeting minutes for October 8 and 15, 2019, as presented.

Pgs. 13-14

b. **AB # 19-211 – November 1-30, 2019 Vouchers**
   Recommended Action: Approve the following November 1 – 30, 2019 vouchers totaling $5,699,538.11 that were approved and paid by the City Auditor.

   - Wire No. 428,434, and 647
   - Check No. 210544 - 210976

Pgs. 15-16

c. **AB # 19-212 – November 1-30, 2019 Payroll and Benefit Transactions**
Recommended Action: Approve payroll direct deposit transactions #2000128087 - #2000128831 in the amount of $2,053,979.63; payroll and benefit checks #38898 - #38946 plus wire benefit payments #655 - #665 in the amount of $2,149,707.35 for November 1, 2019 - November 30, 2019 payroll that were approved and paid by the City Auditor.

Pgs. 17-72

d. **AB # 19-213 – Construction Contract with Wyser Construction, Inc. – Wexler Soil Remediation, Department of Commerce Grant Agreement and Relate Funding**
Recommended Action:

- Authorize the City Manager to enter into a construction contract with Wyser Construction, Inc., in the amount of $823,955 for construction of the Wexler Soil Remediation project and in substantially the same form as that included with the bid documents.

- Authorize the City Manager to enter into a grant agreement contract with the Department of Commerce, in the amount of $1,470,000.

- Adopt the attached ordinances amending the 2019-2020 Capital Improvement Fund Budget by increasing expenditures by $2,635,000 and revenues by$2,549,000 and establishing a short-term line of credit of $1,115,000 to fund additional clean-up from the Stormwater Utility Fund.

Pgs. 73-144

e. **AB # 19-214 – Resolution Updating the City Council Protocol Manual**
Recommended Action: Approve the resolution adopting updates to the City Council Protocol Manual.

Pgs. 145-198

f. **AB # 19-215 – Ordinance Regarding a Small Wireless Facility Franchise Agreement with SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS**
Recommended Action: No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

Pgs. 199-250

g. **AB # 19-216 –Ordinance Regarding a Small Wireless Facility Franchise Agreement with New Cingular Wireless, aka AT&T**
Recommended Action: No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

Pgs. 251-272

h. **AB # 19-217 – Resolution Establishing Stay Out of Drug Areas, Repealing One Prohibited Area, And Renewing Existing Prohibited Areas**
Recommended Action: Adopt the attached Resolution establishing and renewing prohibited areas related to areas of drug activity and repealing one SODA zone.

Pgs. 273-276

i. **AB # 19-218 – 2020 Addendum and Fourth Amendment to City Manager Employment Contract**
Recommended Action: Authorize the Mayor to sign the 2020 Addendum and Fourth Amendment to the Employment Contract with City Manager Phillips.

8. Public Hearings

Pgs. 277-346 a. **AB # 19-219 – Continuation of Public Hearing and Action on 2019 Plan and Code amendments (Capital Facilities Element and establishing Minimum Density and intensity within the Canyon Park and North Creek / NE 195 ST Activity Centers)**
Recommended Action: Adopt the proposed, revised ordinance (Attachment 1) amending the *Imagine Bothell*… Comprehensive Plan, Land Use and Capital Facilities Elements and the Canyon Park and North Creek / NE 195 ST Subarea Plans; and amending BMC Title 11, Administration of Development Regulations; and BMC Title 12 Zoning including regulations for minimum densities and intensities within activity centers.

9. Contracts

Pgs. 347-358 a. **AB # 19-220 - Amendment No. 1 to Interlocal Agreement between Snohomish County and the City of Bothell on an Excise Tax applied to Snohomish County hotels located in Bothell**
Recommended Action: Approve and authorize the City Manager to execute Amendment No. 1 of the Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging.

Pgs. 359-388 b. **AB # 19-221- Amendment No. 1 to the Interlocal Agreement Establishing a Tourism Promotion Area (TPA), increasing the assessment from one dollar ($1.00) per night visit at Snohomish County hotels to two dollars ($2.00) per night visit.**
Recommended Action: Approve and authorize the City Manager to execute Amendment No. 1 to the Interlocal Agreement establishing the Tourism Promotion Area (TPA) in Snohomish County.

10. New Business

Pgs. 389-402 a. **AB # 19-222 – Interlocal Agreement to create North King County Training Consortium with City of Bothell Fire Department, Woodinville Fire & Rescue, Northshore Fire Department and Shoreline Fire Department**
Recommended Action: Approve the Interlocal Agreement for the creation of the North King County Training Consortium with the City of Bothell Fire Department, Woodinville Fire & Rescue and Northshore and Shoreline Fire Departments and direct the City Manager to execute the agreement as presented.

Pgs. 403-414 b. **AB # 19-223 – Salary Commission Ordinance**
Recommended Action: Adopt the ordinance as presented.

Pgs. 415-424 c. **AB # 19-224 – Amendment of BMC Table 20.02.155A Retroactive Fee Corrections for 2018-2019**
Recommended Action: There are two separate actions required:

- Adopt the attached ordinance ratifying collection of the plans review fees
- Adopt the attached ordinance revising BMC 20.02.155A

Pgs. 425-446 d. **AB # 19-225 – Quarterly Financial and Levy Update – 3rd Quarter 2019**
Recommended Action: No action is requested this evening; however, Council is asked to receive the reports.

11. Council Conversations

12. Executive Session

    a. Potential Litigation pursuant to RCW 42.30.110(1)(i)

13. Adjourn

SPECIAL ACCOMODATIONS: The City of Bothell strives to provide accessible meetings for people with disabilities. If special accommodations are required, please contact the ADA Coordinator at (425) 806-6151 at least one day prior to the meeting.

Copies of agenda bills and attachments listed in this agenda may be obtained from the City Clerk's Office the Friday before the meeting. **PRELIMINARY AGENDA:** The preceding is a preliminary agenda; other items may be added and action taken on matters which do not appear above. Bothell City Council meetings are aired live on Bothell Community Television (BCTV) Channel 21/26 (Comcast/Verizon) (available to Comcast and Verizon Cable customers within Bothell City limits). Meetings are generally replayed according to the following schedule (subject to change): Wednesday following the meeting at 10 a.m.; Friday, Saturday and Sunday following the meeting at 10 a.m. and 7 p.m. City Council and Planning Commission meetings and the BCTV schedule are viewable online at www.bothellwa.gov

City Council Regular Meeting Minutes
Tuesday, October 8, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Deputy Mayor Duerr called the meeting to order at 6:00 PM and led the Pledge of Allegiance. All Councilmembers present with the exception of Mayor Rheaume who was absent and excused.

2. Meeting Agenda Approval

There were no changes to the agenda.

3. Visitor Comment

None (see below).

4. Presentations – Meritorious Service Awards

Police Chief Ken Seuberlich, along with Officers Bryan Keller and Ethan Nguyen, awarded five citizen Meritorious Awards for their heroic acts rescuing a fellow citizen about to put themselves in harm.

5. Study Sessions

a. **AB # 19-161 – Proposed Updates to the 2019-2021 City of Bothell Legislative Agenda and Policy Manual**
Recommended Action: Provide feedback to City staff and GTH staff regarding the draft updates to the Legislative Agenda and Policy Manual for 2019-2021 in preparation for approval of the documents on November 19, 2019.

Shelley Helder of Gordon Honeywell Thomas (GTH) presented the item and, along with City Manager Jennifer Phillips, entertained Council questions. Council did not have any changes to the legislative agenda presented.

Visitor Comment:

Sarah Gustafson – spoke regarding trails.

b. **AB # 19-162 - Former Wayne Golf Course Highest and Best Use Analysis Report, specifically targeting the Front 9 (West) four-acre parcel**
Recommended Action: Receive and file the Highest and Best Use Analysis report and provide feedback to staff regarding the results of the report.

Economic Development Manager Jeanie Ashe introduced Rob Hunden of Hunden Strategic Partners who presented the item and together they entertained Council questions. Proposal is to build a boutique hotel with meeting rooms and possibly a day spa along with a brewery or distillery and restaurant.

Discussion ensued.

Council consensus was to hold and receive feedback from two public engagement meetings and allocate $5,000 for an economic impact study to receive more detail regarding a revenue analysis.

Council recessed at 8:07 PM and reconvened at 8:17 PM.

5. New Business

a. **AB # 19-163 – 2020 Human Services Grant Recommendations**
Recommended Action: Approve the recommended grants to provide human services for 2020 and authorize distribution of the allocated funds totaling $306,000 via grant contracts negotiated by the City Manager and allow the City Manager to direct the remaining $50,000 to perform a needs assessment/analysis for future program improvements.

Assistant City Manager Kellye Mazzoli, along with Grants Manager Tracey Perkosky, presented the item and entertained Council questions.

MOTION: Councilmember Agnew moved approval of the recommended action. Councilmember McNeal second. The motion carried 6-0; Mayor Rheaume absent and excused.

6. Council Conversations

Council discussed various topics including homelessness and affordable housing options.

7. Adjourn

Deputy Mayor Duerr adjourned the meeting at 8:48 PM.

Submitted for approval on December 17, 2019

City Council Regular Meeting Minutes
Tuesday, October 15, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance.

All Councilmembers present.

2. Meeting Agenda Approval

The Meeting Agenda was approved as presented.

Councilmember Agnew announced funeral arrangements for Fire Lt. Kirk Robinson who passed away on October 4, 2019. The funeral will be October 24 at 1:00 PM, Overlake Christian Church in Redmond.

3. Public Engagement Opportunities

Mayor Rheaume reviewed upcoming Public Engagement Opportunities.

4. Proclamation

   a. Northshore Schools Foundation – All in for Kids

Deputy Mayor Duerr presented the proclamation to Myriam Juritz of the Northshore Schools Foundation.

5. Special Presentations

   a. Snohomish Health District Update

Snohomish Health District Representative Heather Thomas provided Council a brief update of activities and improvements happening at Snohomish Health District and entertained Council questions.

6. City Manager/Council Committee Reports

   a. Letter to Congresswoman Suzan DelBene - Permanent Repeal of the Medical Device Manufacturing Tax

City Manager Jennifer Phillips reviewed the proposed letter and entertained Council questions.

Council Consensus was to send the letter as presented.

Deputy Mayor Duerr reported on Transportation Improvement Program (TIP).
Councilmember Agnew reported on Arts Commission activities.
Councilmember Zornes reported on Lodging Tax Advisory Committee (LTAC) activities.
Councilmember McAuliffe reported on Parks Board activities.

7. Visitor Comment

Ryan McIrvin – spoke in support of Lime Scooters.
Cindy Fuller – spoke regarding the Parks, Recreation and Open Space (PROS) Plan and the former Wayne property.
Philip Moser – spoke regarding the former Wayne property Consultant's report.
Sarah MacDonald – spoke regarding King County 4 Climate Action.

8. Consent Agenda

a. **Approval of September 10 and 17, 2019 Meeting Minutes**
Recommended Action: Approve the September 10 and 17, 2019 Meeting Minutes as presented.

b. **AB # 19-164 – September 2019 Vouchers**
Recommended Action: Approve the following September 1 – 30, 2019 vouchers totaling $4,329,851.73 that were approved and paid by the City Auditor.
- Wire No.419, 420, 422, and 628
- Check No. 209513-210045

c. **AB # 19-165 – August 2019 Payroll & Benefit Transactions**
Recommended Action: Approve payroll direct deposit transactions #2000125833 - #2000126593 in the amount of $2,028,417.07; payroll and benefit checks #38743 - #38790 plus wire benefit payments #628 - #636 in the amount of $2,167,050.65 for August 1, 2019 – August 31, 2019 payroll that were approved and paid by the City Auditor.

d. **AB # 19-166 – Police, Fire and Emergency Vehicle outfitting Multi-year contract with Systems for Public Safety**
Recommended Action: Authorize the City Manager to enter into a contract with Systems for Public Safety in the amount not to exceed $800,000 over five years for the outfitting of Police, Fire, and Emergency Response vehicles.

e. **AB # 19-167 – Construction Contract for the 7th Ave SE/88th Ave NE Non-Motorized Improvements Project**
Recommended Action: Authorize the City Manager to enter into a construction contract with Kamins Construction, in substantially the same form as included in the bid documents and in the amount of $484,575.40, for the 7th Ave SE/88th Ave NE Non-Motorized Improvements Project.

f. **AB # 19-168 – Professional Services Agreement with Tetra Tech for the design of the Blyth Creek Erosion Control Project**
Recommended Action: Authorize City Manager to enter into a Professional Services Agreement, in substantially the same form as presented, with Tetra Tech for the design of Blyth Creek Erosion Control Project in the amount of $244,733.

g. **AB # 19-169 – Amendment No. 2 for a Time Extension to the Interlocal Agreement (ILA) between Snohomish County and the City of Bothell for Cedar Grove Field Improvements**
Recommended Action: Authorize the City Manager to execute Amendment No.2 for a Time Extension to the Interlocal Agreement between Snohomish County and the City of Bothell for Cedar Grove Field Improvements.

h. **AB # 19-170 – Collective Bargaining Agreement between the City of Bothell and IAFF Local No. 2099**
Recommended Action: Authorize the City Manager to sign the negotiated agreement between representatives of the City of Bothell and IAFF Local No. 2099 for a contract starting on January 1, 2019 and ending on December 31, 2021.

i. **AB # 19-171 – Supplemental Agreement No. 3 to Contract #15-061 with Stewart MacNichols Harmell, Inc., PS, for Indigent Defense Services**
Recommended Action: Authorize the City Manager to execute, in substantially the same form as presented, Supplement No. 3 to the Professional Services Agreement with Stewart MacNichols Harmell, Inc., PS, for indigent defense services.

j. **AB # 19-172 – Canyon Park Subarea Plan Update – Agreement to Utilize State Operating Budget funds**
Recommended Action: Authorize the City Manager to enter into an agreement with the Washington State Department of Commerce in a form substantially similar to Attachment 1.

k. **AB # 19-173 – Canyon Park Subarea Plan Update – Award of Consultant contract**
Recommended Action: Authorize the City Manager to enter into a contact with MAKERS Architecture in an amount not to exceed $279,956 in a form substantially similar to Attachment 1, <u>only</u> after completion of an Agreement with the Washington State Department of Commerce.

l. **AB # 19-174 – Interlocal Agreement with the Northshore Parks and Recreation Service Area for Intern Services**
Recommended Action: Authorize the City Manager to execute an Interlocal Agreement between the Northshore Parks and Recreation Service Area (NPRSA) and the City of Bothell for Intern Services.

MOTION: Councilmember Agnew moved approval of the Consent Agenda as presented. Deputy Mayor Duerr second. The motion carried 7-0.

9. <u>Public Hearing</u>

a. **AB # 19-175 - Public Hearing - Ordinances Establishing New User Rates for Utility Services (Water, Sanitary Sewer, and Storm and Surface Water)**
Recommended Action: Adopt the proposed ordinances establishing new user rates for utility services (water, sanitary sewer, and storm and surface water) and revise and clarify the application and billing processes for the Water and Sewer Utilities.

Mayor Rheaume opened the Public Hearing at 6:37 PM.

Utility Services Manager Boyd Benson presented and entertained Council questions.

There were no public comments.

MOTION: Councilmember McNeal moved approval of the recommended action. Deputy Mayor Duerr second. The motion carried 7-0.

10. Contracts

a. **AB # 19-176 – Construction Contract for the Non-Motorized Bridge at the Park at Bothell Landing**
Recommended Action: Authorize the City Manager to enter into a construction contract with Road Construction Northwest Inc., in the amount of $1,767,030 for the construction of the Non-Motorized Bridge at the Park at Bothell Landing Project, in substantially the same form as presented.

City Engineer Lauren Freist presented and entertained Council questions.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember McNeal second. The motion carried 7-0.

11. Ordinances/Resolutions

a. **AB # 19-177 – Safe and Secure Bothell Implementation: Bond Ordinance and Bond and Levy Budget Amendment Ordinance**
Recommended Action: Approve the Ordinance Authorizing the Sale and Delivery of Bonds not to Exceed $35,500,000 for Fire Station Reconstruction and the Ordinance Amending the 2019-2020 Budget to Recognize and Authorize Safe and Secure Bothell Program Revenues and Expenditures.

Finance Director Chris Bothwell presented and entertained Council questions.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember Agnew second. The motion carried 7-0.

12. Discussion Items/Updates

a. **AB # 19-178 – E-Scooter Pilot Program**
Recommended Action: Council is asked to receive the report, provide comments and provide direction about whether or not e-scooters should be a permanent program in the City of Bothell.

Economic Development Manager Jeanie Ashe presented and entertained Council questions

Council consensus was to continue the program for 180 days.

b. **AB # 19-179 – Canyon Park Subarea Plan Update**
Recommended Action: No action is requested this evening; this is a Council briefing.

Senior Planner Bruce Blackburn presented and entertained Council questions. No action taken.

13. Council Conversations

Discussion topics included the upcoming NPRSA Levy (Councilmembers may support the measure as individuals).

14. Adjourn

Mayor Rheaume adjourned the meeting at 7:59 PM.

Submitted for Approval on December 17, 2019.

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-211

Subject: Approval of November 1, 2019 – November 30, 2019 Vouchers

Budget Impact/Source of Funds: Various

Staff Presenter/Department: Maureen Schols, Deputy Finance Director

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Background:

The voucher checks and wire transactions for the period of November 1 – 30, 2019 have been approved and paid by the City Auditor.

Previous City Actions:

- City Council adopted an ordinance on June 5, 2000, appointing the Finance Director/City Treasurer as City Auditor to approve vouchers for weekly payment. Consistent with state statutes the City Council is then required to ratify this action.

Discussion: N/A

Category: Consent

Attachments:

1. Check and wire listing for November 1 - 30, 2019. (For Council distribution only. Check listings are available for review in the Finance Department.)

Recommended Action:

Approve the following November 1 – 30, 2019 vouchers totaling $5,699,538.11 that were approved and paid by the City Auditor.

- Wire No. 428,434, and 647
- Check No. 210544 - 210976

City Manager Approval: _____ Date: 12/8/2019

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-212

Subject: November 1 - 30, 2019 Payroll & Benefit Transactions

Budget Impact/Source of Funds: Various

Staff Presenter/Department: Maureen Schols, Deputy Finance Director

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Background:

The payroll and benefit direct deposit, wire and check transactions have been approved and paid by the City Auditor for the period of November 1, 2019 - November 30, 2019.

Previous City Actions:

- City Council adopted an ordinance on June 5, 2000, appointing the Finance Director/City Treasurer as City Auditor to approve vouchers for weekly payment. Consistent with state statutes the City Council is then required to ratify this action.

Discussion: N/A

Category: Consent

Attachments:

Check and direct deposit listing for November 1, 2019 - November 30, 2019. (For Council distribution only. Check listings are available for review in the Finance Department.)

Recommended Action:

Approve payroll direct deposit transactions #2000128087 - #2000128831 in the amount of $2,053,979.63; payroll and benefit checks #38898 - #38946 plus wire benefit payments #655 - #665 in the amount of $2,149,707.35 for November 1, 2019 - November 30, 2019 payroll that were approved and paid by the City Auditor.

City Manager Approval: _____ Date: 12/09/2019

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-213

Subject: Construction Contract with Wyser Construction, Inc. – Wexler Soil Remediation, Department of Commerce Grant Agreement and Related Funding

Budget Impact/Source of Funds: A budget amendment and line of credit agreement are required to provide spending authority and funding for this item, see attached. Approval of a Department of Commerce grant agreement is required as well. A detailed financial analysis is provided in a following section.

Staff Presenter/Department: Nduta Mbuthia, Senior Capital Projects Engineer/Public Works

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Connection to Council Goals:

This item is related to the Council Goal of Economic Development.

Background:

In 2015 and 2016 respectively, the City purchased the former Wexler/AL's Auto/Shucks O'Reilly (Wexler) property and the Bothell Service Center/Simon & Sons (BSCSS) in order to complete the vision of its Downtown Revitalization Plan. Both of these properties have soil and groundwater contamination. Portions of these properties are now part of the City's re-parceled surplus property Lot D, which is on the northwest corner of Bothell Way NE (the Multiway Boulevard) and SR522 (see Attachment 3). Wexler is located on the northeast portion of Lot D, while BSCSS is located on the northwest portion. Wexler is identified as parcel number 9457200050; while BSCSS is 2374200065.

In fall 2018, it was determined that the petroleum-contaminated groundwater migrating southwards from Wexler was commingling with the BSCSS solvent plume; consequently resulting in an expansion of the BSCSS Site. Ecology made a determination that the BSCSS consent decree (CD) would be amended to incorporate the cleanup work to address cleanup of the expanded site/commingled plume. A CD amendment was negotiated with Ecology, approved by Council on August 13 and executed by the Superior Court on October 31, 2019. Now that the CD amendment is final, the City is required to start implementing the deliverables listed in the CD (see Attachment 6); one if which is the cleanup construction of the Wexler site. The selected cleanup remedy for the Wexler contamination is removal of contaminated soils and disposal at an approved landfill facility.

Entering into the CD amendment made the City eligible for Remedial Action Grants (RAG) for future work and for past remedial actions at the expanded site. To date, $1.7 million in RAG funds has been reimbursed to the City for cleanup of the BSCSS site. Additional RAG funding in the amount of $2.35 million was secured this year, and will be used to pay for past and future costs

incurred on Wexler investigation and clean up, along with ongoing BSCSS costs. The RAG pays 50 percent of the City's actual cost of the cleanup.

- A total of approximately $420,000 has been expended on the Wexler site since 2009 with a total estimated cost to complete of $1,080,000, for the soil remediation construction contract, environmental consultant oversight, staff costs, compliance groundwater monitoring and report writing.
- A total of approximately $5.8 million has been expended on the BSCSS site since 2013 with a total estimated cost to complete of $600,000, for bio-remediation and compliance groundwater monitoring through 2023.

Work completed on Wexler to date includes:

- Remedial Investigations and preparation of a Remedial Investigation/ Feasibility Study (Kane Environmental July 2019)
- Developed a Cleanup Action Plan (CAP, September 2019) that was finalized and adopted by Ecology following the public comment period that ended on September 24, 2019

Work completed on BSCSS to date includes:

- Installation, operation, and then removal of Electrical Resistance Heating (ERH)
- Installation and operation of Bioremediation/Recirculation remediation systems
- Excavation of contaminated soil
- Installation, operation, and then removal of Soil/vapor extraction (SVE)
- Compliance groundwater monitoring
- Preparation of quarterly progress reports
- Ongoing project oversight and coordination with Ecology

Previous City Actions:

- April 21, 2015: Council adopted an ordinance initiating condemnation of property needed for public use for the Main Street Extension
- April 2, 2016: Final Judgement and Decree of Appropriation of Bothell Service Center property
- June 30, 2016: Council approved a professional services agreement with Kane Environmental, Inc., in the amount of $300,000 for Environmental Support Services
- October 4, 2016: Council approved Supplemental Agreement No. 1 with Kane Environmental, Inc., in the amount of $200,000
- November 21, 2017: Council approved Supplemental Agreement No. 3 with Kane Environmental, Inc., in the amount of $3,700,000
- November 21, 2017: Council approved consent decree with Department of Ecology for cleanup of the Bothell Service Center Association Site.
- December 18, 2018: Council approved Supplemental Agreement No. 4 with Kane Environmental, Inc., in the amount of $2,200,000
- August 13, 2019: Council approved amendment of the Existing Consent Decree with the Washington State Department of Ecology to incorporate Wexler Settlement Area and a budget increase of $2,500,000.

Discussion:

Construction Contract

Staff solicited competitive bids for this project, per the City's procurement policies. The bid opening was held on November 12, 2019. Six bids were received for this project and the lowest responsive and responsible bid was $823,955 submitted by Wyser Construction, Inc. (see Bid Tabulation, Attachment 4). The engineer's estimate was $1,494,340. After evaluating the bids, staff's recommendation is for Council to award the construction contract in the amount of $823,955 to Wyser Construction, Inc. Construction of the Wexler Soil Remediation project is anticipated to begin in January 2020, weather-permitting, and be completed within 20 working days.

Timeliness of this work is important since its completion will allow the Lot D parcel to be marketed for sale.

Department of Commerce Grant

In June 2019, the City received a State grant award of $1,470,000 from the Department of Commerce for the clean-up on Block D. These funds will be used to offset the City's past costs incurred for the remediation of BSCSS and Wexler since July 2016. The contract documentation is included as Attachment 5.

Financial Analysis

While Council action to increase the budget for the downtown clean-up effort in August 2019 allowed the City to move forward with cleaning Lot P South, there are additional budgetary needs to continue the overall clean-up effort. Because this agenda includes a budget amendment and line of credit agreement to address these needs, a brief overview of each site is included below.

Lot D

Remaining clean-up to enable the sale of Lot D (just south of the SHAG development) consists of cleaning up the petroleum contamination on the Wexler (former O'Reilly/Schucks) site.

The excavation contract bid to clean up Wexler petroleum contamination, addressed in this agenda bill, came in lower than anticipated. As such, the City is anticipated to spend less than originally anticipated; however, the Bothell Service Center dry cleaner site has incurred higher overall costs. Ecology required vapor extraction for a longer time and more highly contaminated soil had to be removed than originally anticipated. Bioremediation and monitoring need to continue into the future as well.

Ultra Dry Cleaner Site on City Hall Block

The City is required by agreed order to complete the Remediation Investigation and Feasibility Study (RI/FS) for this site.

Riverside HVOC Site

Similarly, the City is required by agreed order to complete the RI/FS for this site.

Former Bothell Landing, Hertz, and Paint sites

These sites must continue to be monitored per agreed orders.

Lot P South

This site must have a final clean-up report written and monitoring continued.

The total net amount needed to proceed on all these sites is $1,519,000 more than the total expenditure than approved in August 2019 by Council for a total of $6,604,000 estimated expenditure in 2019 and 2020. Department of Ecology remedial action grants are estimated to provide $2,117,000 and the State of Washington Department of Commerce allocation is estimated to provide $1,470,000. The City must provide $3,017,000 versus the originally budgeted $1,902,000.

Additionally, Lot D cleanup has been funded from non-REET resources in the Capital Improvement Fund. Project-to-date cleanup expenditures have nearly depleted non-REET resources in the Capital Improvement Fund and a short term line of credit is required to fund the additional expenditures. Draws on the line of credit will be repaid with the proceeds of sale of Lot D.

The recommendation, in addition to approving the construction contract with Wyser Construction, Inc., is to approve:

1. Entering into the agreement with the State of Washington Department of Commerce to enable the City to access the $1,470,000 allocation,

2. A budget amendment to authorize an additional spending of $1,519,000 on Lot D cleanup and authorize the outflow of resources from the Lending Fund to the Borrowing Fund pursuant to the line of credit; and,

3. A line of credit agreement of $1,115,000 between the Stormwater Utilities Fund (the Lending Fund) and the Capital Improvement Fund (the Borrowing Fund) to provide temporary funding for the clean up;

The following documents are attached to this agenda item to formalize the proposed funding package:

1. An ordinance amending the 2019-2020 Capital Improvement Fund and Stormwater Utility Fund Budgets.
2. A ordinance establishing a line of credit between the Stormwater Utility Fund and the Capital Improvement Fund.

It should be noted that Lot D is officially on the market; proceeds from the sale will be used to repay the line of credit established by the aforementioned resolution and to fund ongoing cleanup expenditures.

The latest estimates of Downtown Contaminated Soil & Groundwater Clean Up Project expenditures include only a placeholder amount for the Ultra Cleaners site near City Hall, and the Bothell Riverside site near the Park at Bothell Landing east parking lot. It is anticipated that further investigative work requested by Ecology will be completed this year and a better idea of total cleanup cost for those sites will be estimated at that time. Staff will bring a contract and funding package to the Council for approval for each of the sites within the Downtown Contaminated Soil & Groundwater Clean Up Project.

Category: Consent

Attachments:

1. Ordinance Amending the 2019-2020 Capital Improvement Fund and Stormwater Utility Fund Budgets
2. Interfund Loan Ordinance
3. Downtown Map
4. Bid Tabulation
5. Department of Commerce Grant Contract
6. Wexler Schedule of Work and Deliverables (excerpt from BSCSS CD Amendment)

Recommended Action:

Authorize the City Manager to enter into a construction contract with Wyser Construction, Inc., in the amount of $823,955 for construction of the Wexler Soil Remediation project and in substantially the same form as that included with the bid documents.

Authorize the City Manager to enter into a grant agreement contract with the Department of Commerce, in the amount of $1,470,000.

Adopt the attached ordinances amending the 2019-2020 Capital Improvement Fund Budget by increasing expenditures by $2,635,000 and revenues by $2,549,000 and establishing a short-term line of credit of $1,115,000 to fund additional clean-up from the Stormwater Utility Fund.

City Manager Approval: _____ Date: 12/09/2019

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ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE 2019-2020 CAPITAL IMPROVEMENT FUND AND STORM AND SURFACE WATER BUDGETS.

WHEREAS, State law, Chapter 35A.34 RCW provides for the biennial adoption of the City's budget and provides procedures for filing of the proposed budget, deliberations, public hearings, final fixing, and any subsequent adjustments to the budget; and

WHEREAS, the 2019-2020 budget was adopted for all funds of the City, including the Capital Improvement and Storm and Surface Water Funds,

WHEREAS, budget development requires staff to make significant predictions about revenues and expenditures for the upcoming biennium and it is not uncommon for budget amendments to be subsequently required to align actual results with the predictions made during budget development,

WHEREAS, the Downtown Contaminated Soil and Groundwater Clean-Up project (the Project) was included in the Adopted 2019-2020 Budget and the revenues and expenditures associated with the project vary from the predicted value included in the Adopted 2019-2020 Budget; and

WHEREAS, a separate budget amendment was approved by the Council in August of 2019 for a different property within the Project; this second amendment is required to account for: additional grant revenue, additional project costs for Lot D cleanup, and funding for a line of credit and subsequent repayments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The adopted budget for the 2019 - 2020 biennium is hereby amended as set forth in the table below, which is attached hereto and incorporated herein by this reference as set forth in full.

Fund No.	Fund Name	Adopted 19-20 Revenue	Adopted 19-20 Expenditure	Amended 19-20 Revenue	Amended 19-20 Expenditure
305	Capital Improvement Fund	66,986,124	73,195,623	69,535,124	75,830,623
406	Storm and Surface Water Fund	14,140,451	19,199,295	14,140,451	20,314,295

Section 2. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

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

APPROVED:

_____
ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

On the 18th day of December 2019, the City Council of the City of Bothell passed Ordinance No._____(2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE 2019-2020 CAPITAL IMPROVEMENT FUND AND STORM AND SURFACE WATER BUDGETS.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

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ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AUTHORIZING AN INTERFUND LOAN IN THE AMOUNT OF ONE AND ONE-QUARTER MILLION DOLLARS ($1,115,000) FROM THE STORM AND SURFACE WATER FUND TO THE CAPITAL IMPROVEMENT FUND TO PROVIDE INTERIM FINANCING FOR HAZARDOUS MATERIALS CLEAN UP ON THE CITY OWNED PROPERTY KNOWN AS "LOT D" AND ESTABLISHING THE TERMS FOR REPAYMENT OF SAID INTERFUND LOAN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City acquired several properties in the City's downtown in an effort to revitalize the area; and

WHEREAS, the City was aware that several of the properties that it acquired had an undetermined amount of hazardous waste present at the time of acquisition with the potential to cause groundwater contamination; and

WHEREAS, the level of effort required to clean up the properties was then unknown, however, the City recognized its responsibility to clean up the properties and resolve any groundwater contamination issues; and

WHEREAS, since acquisition, the City has undertaken the required cleanup and found financial partners to assist with the related funding; and

WHEREAS, the City's has come to a point where the unrestricted and unappropriated resources in the Capital Improvement Fund are insufficient to fund the final cleanup of the downtown property known as "Lot D", and

WHEREAS, the City's Storm and Surface Water Fund has a cash balance that is in excess of its cash needs for the upcoming three years; and

WHEREAS, the Capital Improvement Fund desires a three year line of credit from the Storm and Surface Water Fund to finish the cleanup of Lot D and to prepare the property for sale; and

WHEREAS, the line of credit is expected to be fully repaid from the proceeds of the sale of Lot D, or other City sources if the proceeds of sale are not available to satisfy the obligations of the line of credit timely.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Interfund Loan Authorized. An interfund loan is hereby authorized from the Storm and Surface Water Fund to the Capital Improvement Fund. The Finance Director is authorized to transfer as needed up to a maximum of One and One-Quarter Million Dollars ($1,115,000) from the Storm and Surface Water Fund to provide temporary cleanup funding until the proceeds of the sale of Lot D are available.

Section 2. Terms for Repayment. The interfund loan authorized by this ordinance shall bear interest at the Washington State Local Government Investment Pool (LGIP) rate until repaid. Full repayment of loan is anticipated to occur in early 2021, but in no event shall be later than three years after funds are transferred to the Capital Improvement Fund.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 5. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

APPROVED:

_____

ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____

LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

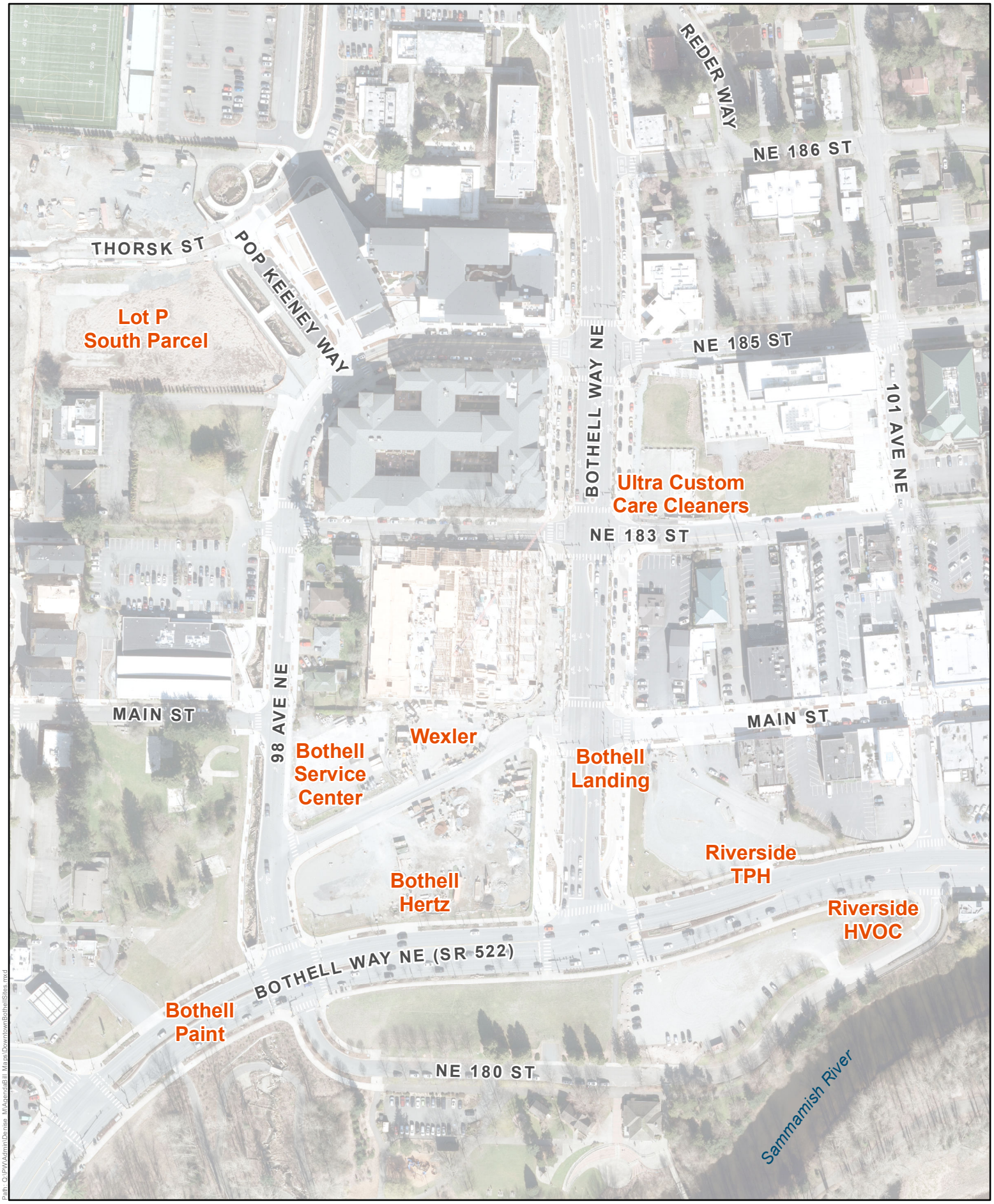
On the 19th day of February, 2019, the City Council of the City of Bothell passed Ordinance No. _____(2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AUTHORIZING AN INTERFUND LOAN IN THE AMOUNT OF ONE AND ON-QUARTER MILLION DOLLARS ($1,250,000) FROM THE STORM AND SURFACE WATER FUND TO THE CAPITAL IMPROVEMENT FUND TO PROVIDE INTERIM FINANCING FOR HAZARDOUS MATERIALS CLEAN UP ON THE CITY OWNED PROPERTY KNOWN AS "LOT D" AND ESTABLISHING THE TERMS FOR REPAYMENT OF SAID INTERFUND LOAN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)



Downtown Bothell Sites

0 40 80 120
Feet

The City of Bothell delivers this data (map) in an AS-IS condition. Any data or information provided by the City of Bothell is intended for informational purposes only. No representation is made concerning the accuracy, currency, or completeness of the information provided.

Date: 1/30/2019

City of Bothell

Path: Q:\PW\Admin\Denise_M\Agenda\Bill Maps\DowntownBothellSites.mxd

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City of Bothell™

PUBLIC WORKS DEPARTMENT
CAPITAL IMPROVEMENT PROJECT
BIDDING RESULTS
FOR
Wexler Soil Remediation

ENGINEER'S ESTIMATE					Wyser Construction Co. Inc.		IO Environmental and Infrastructure, Inc.		Strider Construction Co., Inc.		Glacier Environmental Services, Inc.		OMA Construction, Inc.		Santana Trucking & Exc., Inc.	
Total Cost Estimate:				$ 1,495,340	Total	$ 823,955.00	Total	$ 827,190.89	Total	$ 854,040.00	Total	$ 1,110,615.88	Total	$ 1,283,700.00	Total	$ 1,289,910.60
No.	Bid Item Description	Qty.	Unit Meas	Engineer's Cost Estimate Unit Price	Engineer's Cost Estimate Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
1	Unanticipated Changes	1	EST	$10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 10,000.00
2	Utility Protection & Coordination	1	LS	$30,000.00	$ 30,000.00	$ 12,500.00	$ 12,500.00	$ 15,290.05	$ 15,290.05	$ 25,000.00	$ 25,000.00	$ 15,000.00	$ 15,000.00	$ 55,000.00	$ 55,000.00	$ 17,500.00	$ 17,500.00
3	Mobilization	1	LS	$150,000.00	$ 150,000.00	$ 59,500.00	$ 59,500.00	$ 34,800.99	$ 34,800.99	$ 120,000.00	$ 120,000.00	$ 104,150.00	$ 104,150.00	$ 115,000.00	$ 115,000.00	$ 106,700.00	$ 106,700.00
4	Site Preparation	1	LS	$30,000.00	$ 30,000.00	$ 4,800.00	$ 4,800.00	$ 15,046.97	$ 15,046.97	$ 30,000.00	$ 30,000.00	$ 17,500.00	$ 17,500.00	$ 125,000.00	$ 125,000.00	$ 77,000.00	$ 77,000.00
5	Surveying	1	LS	$8,000.00	$ 8,000.00	$ 4,500.00	$ 4,500.00	$ 8,485.07	$ 8,485.07	$ 6,000.00	$ 6,000.00	$ 8,000.00	$ 8,000.00	$ 35,000.00	$ 35,000.00	$ 7,600.00	$ 7,600.00
6	Minimum Excavation Area	2000	BCY	$88.00	$ 176,000.00	$ 10.00	$ 20,000.00	$ 11.42	$ 22,840.00	$ 50.00	$ 100,000.00	$ 26.00	$ 52,000.00	$ 25.00	$ 50,000.00	$ 33.00	$ 66,000.00
7	Additional Excavation Area	500	BCY	$80.00	$ 40,000.00	$ 10.00	$ 5,000.00	$ 9.29	$ 4,645.00	$ 50.00	$ 25,000.00	$ 30.00	$ 15,000.00	$ 25.00	$ 12,500.00	$ 33.00	$ 16,500.00
8	Contaminated Soil Haul & Disposal	4500	TN	$155.00	$ 697,500.00	$ 85.00	$ 382,500.00	$ 97.95	$ 440,775.00	$ 57.00	$ 256,500.00	$ 106.00	$ 477,000.00	$ 98.00	$ 441,000.00	$ 121.00	$ 544,500.00
9	Place and Compact Fill	4500	TN	$30.00	$ 135,000.00	$ 35.00	$ 157,500.00	$ 28.81	$ 129,645.00	$ 22.00	$ 99,000.00	$ 46.00	$ 207,000.00	$ 35.00	$ 157,500.00	$ 32.00	$ 144,000.00
10	Shoring or Extra Excavation Class B Incl. Haul	140	SF	$10.00	$ 1,400.00	$ 300.00	$ 42,000.00	$ 99.99	$ 13,998.60	$ 60.00	$ 8,400.00	$ 35.72	$ 5,000.80	$ 150.00	$ 21,000.00	$ 50.00	$ 7,000.00
11	Temporary Erosion and Sediment Control Measures	1	LS	$15,000.00	$ 15,000.00	$ 7,250.00	$ 7,250.00	$ 10,077.79	$ 10,077.79	$ 15,000.00	$ 15,000.00	$ 18,000.00	$ 18,000.00	$ 35,000.00	$ 35,000.00	$ 15,000.00	$ 15,000.00
12	Water Treatment System Installation, Operation & Maintenance	1	LS	$60,000.00	$ 60,000.00	$ 42,500.00	$ 42,500.00	$ 44,233.35	$ 44,233.35	$ 80,000.00	$ 80,000.00	$ 80,000.00	$ 80,000.00	$ 85,000.00	$ 85,000.00	$ 150,846.00	$ 150,846.00
13	Well Decommissioning	1	EA	$6,500.00	$ 6,500.00	$ 1,000.00	$ 1,000.00	$ 2,153.90	$ 2,153.90	$ 1,500.00	$ 1,500.00	$ 1,000.00	$ 1,000.00	$ 25,000.00	$ 25,000.00	$ 10,000.00	$ 10,000.00
Schedule A Subtotal:					**$ 1,359,400.00**		**$ 749,050.00**		**$ 751,991.72**		**$ 776,400.00**		**$ 1,009,650.80**		**$ 1,167,000.00**		**$ 1,172,646.00**
Washington State Sales Tax		**10%**			**$ 135,940.00**		$ 74,905.00		$ 75,199.17		$ 77,640.00		$ 100,965.08		$ 116,700.00		$ 117,264.60
SubTotal Construction Cost Estimate:					**$ 1,495,340.00**		**$ 823,955.00**		**$ 827,190.89**		**$ 854,040.00**		**$ 1,110,615.88**		**$ 1,283,700.00**		**$ 1,289,910.60**
Total Construction Cost Estimate:					**$ 1,495,340.00**		**$823,955.00**		**$827,190.89**		**$854,040.00**		**$ 1,110,615.88**		**$ 1,283,700.00**		**$1,289,910.60**

Project Engineer: Nduta Mbuthia

Consulting Engineer: Kane Environmental Inc/Dailey Engineering

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Department of Commerce

Grant to

City of Bothell
through

The Local and Community Projects Program

For

Bothell Downtown Revitalization

Start date: July 1, 2019

TABLE OF CONTENTS

FACE SHEET 1
DECLARATIONS 3
SPECIAL TERMS AND CONDITIONS 5
1. GRANT MANAGEMENT 5
2. COMPENSATION 5
3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES 5
4. PREVAILING WAGE LAW 6
5. DOCUMENTATION AND SECURITY 6
6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES 6
7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT 6
8. BILLING PROCEDURES AND PAYMENT 7
9. SUBCONTRACTOR DATA COLLECTION 8
10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT 8
11. INSURANCE 8
12. ORDER OF PRECEDENCE 10
13. REDUCTION IN FUNDS 10
14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES 10
15. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY 10
16. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE 11
17. SIGNAGE, MARKERS AND PUBLICATIONS 11
18. HISTORICAL AND CULTURAL ARTIFACTS 11
19. REAPPROPRIATION 12
20. TERMINATION FOR FRAUD OR MISREPRESENTATION 12
GENERAL TERMS AND CONDITIONS 13
21. DEFINITIONS 13
22. ACCESS TO DATA 13
23. ADVANCE PAYMENTS PROHIBITED 13
24. ALL WRITINGS CONTAINED HEREIN 13
25. AMENDMENTS 13
26. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35 14
27. ASSIGNMENT 14
28. ATTORNEYS’ FEES 14
29. AUDIT 14

30. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION 15
31. CONFLICT OF INTEREST 15
32. COPYRIGHT PROVISIONS 16
33. DISPUTES 16
34. DUPLICATE PAYMENT 17
35. GOVERNING LAW AND VENUE 17
36. INDEMNIFICATION 17
37. INDEPENDENT CAPACITY OF THE GRANTEE 17
38. INDUSTRIAL INSURANCE COVERAGE 17
39. LAWS 17
40. LICENSING, ACCREDITATION AND REGISTRATION 17
41. LIMITATION OF AUTHORITY 18
42. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS 18
43. PAY EQUITY 18
44. POLITICAL ACTIVITIES 18
45. PUBLICITY 18
46. RECAPTURE 18
47. RECORDS MAINTENANCE 19
48. REGISTRATION WITH DEPARTMENT OF REVENUE 19
49. RIGHT OF INSPECTION 19
50. SAVINGS 19
51. SEVERABILITY 19
52. SITE SECURITY 19
53. SUBGRANTING/SUBCONTRACTING 19
54. SURVIVAL 20
55. TAXES 20
56. TERMINATION FOR CAUSE 20
57. TERMINATION FOR CONVENIENCE 20
58. TERMINATION PROCEDURES 20
59. TREATMENT OF ASSETS 21
60. WAIVER 21
ATTACHMENT A - SCOPE OF WORK 23
ATTACHMENT B - CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT 25
ATTACHMENT C- CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES 27

ATTACHMENT D - CERTIFICATION OF INTENT TO ENTER THELEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS..... 29

FACE SHEET

Grant Number: 20-96627-021
Project Name: Bothell Downtown Revitalization

Washington State Department of Commerce
Local Government Division
Community Assistance and Research Unit

1. GRANTEE Bothell, City of 18415 101ST AVE NE BOTHELL, WA 98011	**2. GRANTEE Doing Business As (optional)** N/A
3. GRANTEE Representative Nduta Mbuthia City of Bothell 18415 101st Ave Bothell, WA 98011	**4. COMMERCE Representative** Susan Butz, Grant Manager PO Box 42525, Olympia, WA 98504 (360) 725-2741 susan.butz@commerce.wa.gov

5. Grant Amount	**6. Funding Source**	**7. Start Date**	**8. End Date**
$1,470,000.00	**Federal: State:** X **Other: N/A:**	July 1, 2019	June 30, 2023 (subject to reappropriation)

9. Federal Funds (as applicable)	**Federal Agency**	**CFDA Number**
N/A	**N/A**	**N/A**

10. Tax ID #	**11. SWV #**	**12. UBI #**	**13. DUNS #**
XXXXXXXXXXXXXX	SWV0018945-00	179007103	N/A

14. Grant Purpose
The outcome of this performance-based Grant Agreement is to undertake a legislatively approved project that furthers the goals and objectives of Washington State Direct Appropriations Program as referenced in Attachment A – Scope of Work.

COMMERCE, defined as the Washington State Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Certification of Availability of Funds to Complete the Project, Attachment "C" – Certification of the Payment and Reporting of Prevailing Wages, Attachment "D" – Certification of Intent to Enter LEED process.

FOR GRANTEE	**FOR COMMERCE**
_____ Signature	_____ Mark K. Barkley, Assistant Director Local Government Division
_____ Print Name	_____ Date
_____ Title	**APPROVED AS TO FORM**
_____ Date	_____ Luke Eaton, Assistant Attorney General **8/13/2019**
	_____ Date

DECLARATIONS

GRNTEE INFORMATION

GRANTEE Name:	**Bothell, City of**
Grant Number:	20-96627-021
State Wide Vendor Number:	SWV0018945-00

PROJECT INFORMATION

Project Name:	**Bothell Downtown Revitalization**
Project City:	BOTHELL
Project State:	Washington
Project Zip Code:	98011

GRANT AGREEMENT INFORMATION

Grant Amount:	**$1,470,000.00**
Appropriation Number:	SHB 1102.PL Section 1042 (2019 Regular Session)
Re-appropriation Number (if applicable):	N/A
Grant End Date:	**June 30, 2023 (subject to reappropriation)**
Biennium:	2019-2021
Biennium Close Date:	June 30, 2021
Earliest Date for Construction Reimbursement:	July 1, 2016

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

N/A

SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS

THIS GRANT AGREEMENT, entered into by and between the GRANTEE and COMMERCE, as defined on the Face Sheet of this Grant Agreement, WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has made an appropriation to support the Local and Community Projects Program, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for design, acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed the awarded Grant Amount as shown on the Face Sheet of this Grant Agreement, for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

A. The release of state funds under this Grant Agreement is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

i) Eligible Project expenditures prior to the execution of this Grant Agreement.
ii) Cash dedicated to the Project.
iii) Funds available through a letter of credit or other binding loan commitment(s).
iv) Pledges from foundations or corporations.
v) Pledges from individual donors.
vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
vii) In-kind contributions, subject to COMMERCE'S approval.

B. The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE's review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations that involve the expenditure of over $500,000 in state funds. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for design only are exempt from this section.

A. Deed of Trust. This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of Grant Agreement execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the Grant as set forth on the Face Sheet, hereof.

B. Term of Deed of Trust. The Deed of Trust shall remain in full force and effect for a period of ten (10) years following the final payment of state funds to the GRANTEE under this grant. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.

C. Title Insurance. The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.

D. Subordination. COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

A. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.

B. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Grantee shall be made on a reimbursement basis only. Costs incurred on or after the EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT as shown on the Declarations page are eligible for reimbursement under this Grant Agreement. The GRANTEE may be reimbursed for the following eligible costs related to the activities identified in the SCOPE OF WORK shown on Attachment A.

A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
B. Design, engineering, architectural, and planning;
C. Construction management and observation (from external sources only);
D. Construction costs including, but not limited to, the following:
Site preparation and improvements;
Permits and fees;
Labor and materials;
Taxes on Project goods and services;
Capitalized equipment;
Information technology infrastructure; and
Landscaping.
E. Other costs authorized through the legislation

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the Grant Agreement. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Section 19, hereof.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE. COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.
No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs
The GRANTEE shall not bill COMMERCE for services performed under this Grant Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs
The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

9. SUBCONTRACTOR DATA COLLECTION

GRANTEE will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The GRANTEE shall complete a Certified Project Completion Report when activities identified in the SCOPE OF WORK shown on Attachment A are complete.

The GRANTEE shall provide the following information to COMMERCE:

A. A certified statement that the Project, as described in the SCOPE OF WORK shown on Attachment A, is complete and, if applicable, meets required standards.
B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the SCOPE OF WORK shown on Attachment A.
C. Certification that all costs associated with the Project have been incurred and accounted for. Costs are incurred when goods and services are received and/or Grant work is performed.
D. A final voucher for the remaining eligible funds, including any required documentation.

The GRANTEE will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the Grant Amount.

11. INSURANCE

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

The GRANTEE shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.
The GRANTEE shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than $1,000,000 per occurrence.

Additionally, the GRANTEE is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the GRANTEE or its Subgrantee/subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The GRANTEE shall maintain Professional Liability or Errors and Omissions Insurance. The GRANTEE shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the GRANTEE and licensed staff employed or under contract to the GRANTEE. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

A. The amount of fidelity coverage secured pursuant to this Grant shall be $2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

B. Subgrantees/subcontractors that receive $10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees/subcontractors pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.

C. The GRANTEE shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.
Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

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

12. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Declarations page of this Grant Agreement
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages
- Attachment D – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

13. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Grant Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

15. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the date the final payment is made hereunder.

B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.

C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 46 (Recapture provision).

16. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the date the final payment is made hereunder.

B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 46 (Recapture Provision).

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this Grant Agreement, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify “The Taxpayers of Washington State” as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Grant Agreement, GRANTEE shall complete the requirements of Governor’s Executive Order 05-05, where applicable, or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Grant Agreement.

In addition to the requirements set forth in this Grant Agreement, GRANTEE shall, in accordance with Governor’s Executive Order 05-05, coordinate with COMMERCE and the Washington State Department of Archaeology and Historic Preservation (“DAHP”), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by the Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Grant Agreement.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the COMMERCE Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Grant Agreement, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor’s Executive Order 05-05.

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

19. REAPPROPRIATION

A. The parties hereto understand and agree that any state funds not expended by the BIENNIUM CLOSE DATE listed on the Declarations page will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this Grant Agreement shall be contingent upon the terms of such reappropriation.

B. In the event any funds awarded under this Grant Agreement are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS

21. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

B. "COMMERCE" shall mean the Department of Commerce.

C. "GRANTEE" shall mean the entity identified on the Face Sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.

D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

E. "State" shall mean the state of Washington.

F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.

G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

I. "Grant Agreement" or "Agreement" means the entire written agreement between COMMERCE and the GRANTEE, including any Attachments, Exhibits, documents, or materials incorporated by reference.

22. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

23. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

24. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

25. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

26. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

27. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

28. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

29. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE's records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE's fiscal year(s) by sending a scanned copy to comacctoffice@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Accounting Services
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

30. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

31. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this Grant Agreement if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this Grant Agreement.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this Grant Agreement is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the Grant Agreement by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Grant Agreement.

32. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

33. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.
The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the GRANTEE's name, address, and Grant number; and
- be mailed to the Director and the other party’s (respondent’s) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor’s statement to both the Director or the Director’s designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.
The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties’ choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

34. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

35. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

36. INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims. "Claim" as used in this Grant Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees. GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's/subcontractor's performance or failure to perform the Grant. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

37. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Grant Agreement are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

38. INDUSTRIAL INSURANCE COVERAGE

The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE under this Grant Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

39. LAWS

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

40. LICENSING, ACCREDITATION AND REGISTRATION

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant Agreement.

41. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

42. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

43. PAY EQUITY

The GRANTEE agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
    (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
    (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
    (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant Agreement may be terminated by COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

44. POLITICAL ACTIVITIES

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a RCW and the Federal Hatch Act, 5 USC 1501 - 1508. No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

45. PUBLICITY

The GRANTEE agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

46. RECAPTURE

In the event that the GRANTEE fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

47. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

48. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue.

49. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

50. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

51. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

52. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

53. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this Grant Agreement without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

54. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

55. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the GRANTEE's income or gross receipts, any other taxes, insurance or expenses for the GRANTEE or its staff shall be the sole responsibility of the GRANTEE.

56. TERMINATION FOR CAUSE

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.
The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

57. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

58. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.
COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this

Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.
The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.
After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

59. <u>TREATMENT OF ASSETS</u>

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant
All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

60. <u>WAIVER</u>

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT A - SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures related to remediation/cleanup of contaminated soils and groundwater through electrical resistance heating, soil excavation, soil vapor extraction, groundwater treatments, and bioremediation of the Lot D parcel which is comprised of Bothell Service Center and Wexler Site, which are all the same site. The location of the project is Lot D in downtown Bothell.

This project began in May 2018 and is expected to be complete by June, 2020.

All project work completed with prior legislative approval. The “Copyright Provisions”, Section 32 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE’s governing body as of the date and year written below.

_____
GRANTEE

_____
TITLE

_____
DATE

ATTACHMENT B - CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	$1,470,000
Other Grants		
Grant #1	Department of Ecology	$1,700,000
Grant #2		$
Total Other Grants		**$1,700,000**
Other Loans		
Loan #1		$
Loan #2		$
Total Loans		**$0.00**
Other Local Revenue		
Source #1	REET, Bothell	$2,667,000
Total Local Revenue		**$2,667,000**
Other Funds		
Source #1		$
Source #2		$
Total Other Funds		**$**
Total Project Funding		**$5,837,000**

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

_____
GRANTEE

_____
TITLE

_____
DATE

ATTACHMENT C- CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

_____
GRANTEE

_____
TITLE

_____
DATE

ATTACHMENT D - CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this Grant Agreement. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

EXEMPT: DO NOT SIGN

_____
GRANTEE

_____
TITLE

_____
DATE

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Exhibit G
Wexler Schedule of Work and Deliverables

Deliverables		Due (Calendar Days)[1]
A. Administrative		
A.1	File first amendment to Consent Decree with the King County Superior Court	Within 5 days of the execution by the Parties
A.2	Notification of selected contractor name and qualifications	Within 5 days of the effective date of First Amendment to Consent Decree
A.3	Progress Reports	Quarterly on the 10th of the month beginning after the effective date of the First Amendment to Consent Decree
A.4	Financial Assurances – submit cost estimate for Ecology review and approval	Within 60 days of the effective date of First Amendment to Consent Decree
A.5	Financial Assurances - provide proof of financial assurances	Within 60 days after Ecology approves cost estimate (A.4)
B. Design		
B.1	Draft Project Plans(2) and EDR Report(3)	Within 30 days of the effective date of First Amendment to Consent Decree
B.2	Final Project Plans and EDR Report	Within 5 days of receipt of Ecology's comments on the Draft EDR Report (B.1)
B.3	90 % Plans and Specs [per WAC 173-340-400(4)(b)]	Within 30 days of receipt of Ecology comments on Final EDR Report (B.2)
B.4	100 % Plans and Specs	Within 15 days of receipt of Ecology comments on 90 % plans and specifications (B.3)
C. Field Construction		
C.1	Complete Construction Procurement	Within 45 days of completion of the 100% plans and specifications (B.4)
C.2	Complete Construction	Within 9 months of the effective date of First Amendment to Consent Decree
C.3	Cleanup Action Report and As-Built Drawings and Report [per WAC 173-340-400(6)(b)]	Within 60 days of completing construction (C.2)
D. Post Construction Work		
D.1	Draft Environmental Covenant or Covenant Amendment (if required)	Within 30 days of receipt of Ecology request for Draft Environmental Covenant or Covenant Amendment
D.2	Record Final Environmental Covenant or Covenant Amendment with King County (if required)	Within 10 days after Ecology's approval of the Draft Covenant or Covenant Amendment (if required)
D.3	Protection Monitoring, Quarterly Compliance Monitoring (Performance and Confirmation)	Per the Compliance Monitoring Plan and Contingency Response Plan

1) *Schedule is in calendar days. Deliverable due date may be modified with Ecology concurrence without amendment to the Consent Decree.*
2) *Project Plans include the following: Work Plan, Sampling and Analysis Plan, Quality Assurance Project Plan, and Health and Safety Plan, to be submitted for Ecology review and approval. All plans will include a schedule for implementation as applicable.*
3) *The Engineering Design Report includes: a Construction Quality Assurance Project Plan, a Compliance Monitoring and Contingency Response Plan, an Operation and Maintenance Plan, Proposed Best Management Practices, Water Quality Monitoring Plan, and Substantive Requirements of Procedurally Exempt Permits. Ecology will not approve the Final EDR until the required permits have been obtained.*

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Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: December 17, 2019 Action ☒ Study Session ☐ AB #: 19-214

Subject: Resolution Updating the City Council Protocol Manual

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Laura Hathaway, City Clerk

Background:

The City Council Protocol Manual was last updated on April 18, 2017. The majority of updates proposed this evening are housekeeping in nature and include revisions to Section 8.04 (page 34) Placing Items on the Agenda, and Section 8.07 (page 35) Order of Business.

New language under Advisory Bodies, Section 2.08 (f) (page 14) is being proposed to address Cause for Dismissal, as previously there was no language outlining the process to remove a member from a Board or Commission.

Category: Consent

History:

- The Protocol Manual was last updated on April 18, 2017.

Recommended Action:

Approve the resolution adopting the updates to the City Council Protocol Manual.

Attachments:

1. Proposed Resolution
2. Exhibit A – Protocol Manual (track changes version).

City Manager Approval: _____ Date: 12/9/2019

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, REVISING THE CITY COUNCIL PROTOCOL MANUAL, AMENDING RESOLUTION NO. 1099 (2000), AS AMENDED BY RESOLUTION NO. 1140 (2002), RESOLUTION NO. 1184 (2006), RESOLUTION NO. 1200 (2007), RESOLUTION NO. 1201 (2007), RESOLUTION NO. 1230 (2009), RESOLUTION NO. 1255 (2010), RESOLUTION NO. 1295 (2013), RESOLUTION NO. 1296 (2013), RESOLUTION NO. 1298 (2013) AND RESOLUTION NO. 1360 (2017)

WHEREAS, the City Council adopted the City Council Protocol Manual on June 12, 2000, and amended same on July 22, 2002, March 13, 2006, March 20, 2007, April 17, 2007, March 17, 2009, May 4, 2010, March 19, 2013, April 2, 2013, July 9, 2013, and April 18, 2017; and

WHEREAS, the City Council has reviewed the Protocol Manual and has determined there are certain revisions that should be made.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Resolution No. 1099, as amended by Resolution Nos. 1140, 1184, 1200, 1201, 1230, 1255, 1295, 1296, 1298 and 1360 is hereby amended by certain revisions to the City of Bothell City Council Protocol Manual, those revisions summarized and specified in Exhibit "A" to this resolution, which is incorporated and hereby made a part of this resolution.

Section 2. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

PASSED this 17th Day of December, 2019

APPROVED:

_____

ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____

LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.:

CITY OF BOTHELL

CITY COUNCIL PROTOCOL MANUAL

City of Bothell

Adopted: June 12, 2000
Resolution No. 1099 (2000)

Revised: July 22, 2002
Resolution No. 1140 (2002)

Revised: March 13, 2006
Resolution No. 1184 (2006)

Revised: March 20, 2007
Resolution No. 1200 (2007)

Revised: April 17, 2007
Resolution No. 1201 (2007)

Revised: March 17, 2009
Resolution No. 1230 (2009)

Revised: May 4, 2010
Resolution No. 1255 (2010)

Revised: March 19, 2013
Resolution No. 1295 (2013)

Revised: April 2, 2013
Resolution No. 1296 (2013)

Revised: July 9, 2013
Resolution No. 1298 (2013)

Revised: April 18, 2017
Resolution No. 1360 (2017)

TABLE OF CONTENTS

OATH OF OFFICE **3**

FOREWORD **4**

CHAPTER 1 ..... **5**

INTRODUCTION AND OVERVIEW **5**
1.01 Council-Manager Form of Government 5
1.02 Association of Washington Cities and Municipal Research & Services Center of Washington . 5
1.03 Purpose of City Council Protocol Manual 5
1.04 Overview of Basic City Documents 6
1.05 Orientation of New Members 7

CHAPTER 2 ..... **8**

BOTHELL CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES **8**
2.01 City Council Generally 8
2.02 Role of Councilmembers 9
2.03 Role of Mayor 9
2.04 Absence of Mayor and Councilmembers 10
2.05 Election of Officers 10
2.06 Emergency Response 11
2.07 Appointment of Officer 11
2.08 Advisory Bodies 11
2.09 Incompatibility of Offices 16

CHAPTER 3 ..... **17**

SUPPORT PROVIDED TO CITY COUNCIL **17**
3.01 Staff Liaison 17
3.02 Electronic Devices 17
3.03 Meeting Rooms 17
3.04 Mail, Deliveries 17

CHAPTER 4 ..... **18**

FINANCIAL MATTERS **18**
4.01 Council Compensation 18
4.02 Budget 18
4.03 Financial Disclosure 18
4.04 Travel Policy 18

CHAPTER 5 ..... **19**

COMMUNICATIONS **19**
5.01 Overview 19
5.02 Correspondence from Councilmembers 19
5.03 Local Ballot Measures 19
5.04 Proclamations 20
5.05 State Public Disclosure Act & Open Public Meetings Act 20
5.06 *Bothell Bridge* – "Council Corner" 21

CHAPTER 6 ..... **22**

CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS **22**
6.01 Conflicts of Interest 22
6.02 Liability 24

CHAPTER 7 ..... **25**

INTERACTION WITH CITY STAFF/OFFICIALS **25**
7.01 Overview 25
7.02 Council-Manager Plan of Government 25
7.03 City Council Non-interference 26
7.04 City Council/City Manager Relationship 26
7.05 City Council/City Staff Relationship 26
7.06 Code of Ethics 27
7.07 City Council/City Attorney Relationship 27
7.08 Roles and Information Flow 27
7.09 Dissemination of Information 29
7.10 Magnitude of Information Request 29
7.11 Staff Relationship to Advisory Bodies 29
7.12 Restrictions on Political Involvement by Staff 30
7.13 Council Attendance Policy 30
7.14 Attendance via Speakerphone (AVS) 30

CHAPTER 8 ..... **32**

CITY COUNCIL MEETINGS **32**
8.01 Meeting Schedule 32
8.02 Public Notice of Meetings and Hearings 32
8.03 Special Meetings 33
8.04 Placing Items on the Agenda 33
8.05 Development of the Agenda 34
8.06 Audio Recording of Meetings 34
8.07 Order of Business Regular Meetings 34
8.08 Order of Business Study Sessions **38**
8.09 General Procedures 38
8.10 Open Meeting Law 39

CHAPTER 9 ..... **41**

PROTOCOL ADMINISTRATION **41**
9.01 Biennial Review 41
9.02 Adherence to Protocol 41
9.03 City Attorney as Protocol Advisor 42
9.04 Adherence to Non-interference Ordinance 42
9.05 Applicability of Protocol Manual 42

CHAPTER 10 ..... **43**

LEAVING OFFICE **43**
10.01 Return of Materials and Equipment 43
10.02 Filling Council Vacancies 43

CHAPTER 11 ..... **43**

ADDITIONAL TRAINING AND RESOURCE MATERIALS **46**
11.01 Association of Washington Cities [(800) 562-8981] 46
11.02 National League of Cities [(202) 626-3000] 46
11.03 International City/County Management Association [(202) 289-4262] 46
11.04 Government Finance Officers Association [(312) 977-9700] 46
11.05 Municipal Research & Services Center of Washington [(206) 625-1300] 46
11.06 Appendix 46
- Glossary of Terms 47
- Parliamentary Procedure 50
- Board and Commission Matrix 64

CITY OF BOTHELL

OATH OF OFFICE

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I do solemnly swear that I will support the Constitution and laws of the United States and the State of Washington and ordinances of the City of Bothell, and that I will faithfully and impartially perform the duties of City Councilmember of the City of Bothell, to the best of my ability.

Signed _____

Term of Office:
Month day, year - Month day, year

Subscribed and sworn to before me this

_____ day of_____,_____.

_____
(Name)
Mayor

Attest:

_____
(Name)
City Clerk

Foreword

In the course of serving as a public official, there are myriad of issues with which you will become involved. This protocol manual attempts to centralize information on common issues related to local government and your role as a member of the Bothell City Council.

The issues that are addressed in this publication are often complex and subjective. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney.

The protocols included in this reference document have been formally adopted by the City Council. Provisions contained herein will be reviewed as needed or every two years.

Chapter 1
Introduction and Overview

As a City Councilmember, you not only establish important and often critical policies for the community, you are also a board member of a public corporation having an annual budget of several million dollars. The scope of services and issues addressed by the city organization go well beyond those frequently reported in the newspaper or discussed at City Council meetings.

1.01 Council-Manager Form of Government

The City of Bothell is a Council-Manager form of government. As described in the Municipal Code and Revised Code of Washington, certain responsibilities are vested in the City Council and the City Manager. Basically, this form of government prescribes that a City Council's role is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines what public policy is and gives direction to the City Manager to administer the affairs of the city government in a businesslike and prudent manner.

1.02 Association of Washington Cities and Municipal Research & Services Center of Washington

The Code City Handbook, Report No. 37, published by the Municipal Research & Services Center (MRSC), provides a wealth of general information on the major functions of a Councilmember's job as a locally elected official. Another publication from MRSC that goes hand in hand with the handbook is, Knowing the Territory: This report discusses basic powers; basic duties, liabilities, and immunities of officers; conflict of interest and appearance of fairness; prohibited uses of public funds, property, or credit; competitive bidding requirements; the Open Public Meetings Act; Open Government-Public Records-Freedom of Information; and immunities from tort liability.

1.03 Purpose of City Council Protocol Manual

The City of Bothell has prepared its own protocol manual to assist the City Council by documenting accepted practices and clarifying expectations. Administration of City Council affairs is greatly enhanced by the agreement of the City Council and staff to be bound by these practices. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide Councilmembers in their actions.

1.04 Overview of Basic City Documents

This protocol manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction.

A. Vision/Mission Statement

B. Bothell Municipal Code

The municipal code contains local laws and regulations adopted by ordinances. Title 2 of the code addresses the role of the City Council, describes the organization of City Council meetings and responsibilities and appointment of certain city staff positions and advisory boards and commissions. Titles 13 and 22 also address advisory boards and commissions. In addition to these administrative matters, the municipal code contains a variety of laws including, but not limited to, zoning standards, health and safety issues, traffic regulations, building standards, and revenue and finance issues.

C. Personnel Policies

It is the policy of the City of Bothell to uphold, promote, and demand the highest standards of ethics from all of its elected and appointed officials. Accordingly, all members of the City Council, members of all appointed boards, commissions, committees, City employees, consultants and professional service providers are expected to maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties; avoid any improprieties in their roles as public servants; and never use their City position or powers for personal gain. Section 2 and 10 of the City of Bothell Personnel Policies and Procedures address general rules of conduct and provides guidelines for City officials to be worthy of the public trust and abide by their Oath of Office.

D. Revised Code of Washington

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Bothell is an "optional code city," which means it operates under the general laws of the state. As an optional code city of the State of Washington, Bothell is vested with all the powers of incorporated cities as set forth in the Revised Code of Washington (RCW), Constitution of the State of Washington, and Bothell Municipal Code. Conversely, there are a number of cities within Washington that are "charter cities" and have adopted local provisions that establish basic governing procedures for local government. There are also 1st, 2nd, 3rd, and 4th Class cities that have variable statutory authority based on population. (Please see RCW Titles 35 and 35 A in general, and RCW 35.18 and 35A.13 for more specific information relating to the Council-Manager Plan of Government.

E. Biennial Budget

The biennial budget is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the biennial budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations.

F. Comprehensive Annual Financial Report (CAFR)

The annual financial report includes the financial statements of the City for a calendar year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial report includes statements for the various groups of funds and a consolidated group of statements for the City as a whole.

G. Comprehensive Plan

A state-mandated comprehensive plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements. The City's comprehensive plan, *Imagine Bothell...* is reviewed on an ongoing basis, but may only be revised once a year, except as provided by State law.

H. Six-year Capital Improvement Program

The Six-year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and constructing capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of city services.

I. Disaster Preparedness Plan

The City maintains a disaster preparedness plan that outlines actions to be taken during times of extreme emergency. The Mayor is called upon to declare the emergency, and then the Fire Chief directs all disaster response activities. The City Council may be called upon during an emergency to establish policies related to a specific incident.

1.05 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the City Manager and City Clerk will host an orientation program that provides an opportunity for members to tour municipal facilities and meet with key staff within the first quarter of taking office Another training opportunity for new members is the Association of Washington Cities-sponsored newly elected officials' orientation. At any time, if there are facilities or programs about which you would like more information, arrangements will be made to increase your awareness of these operations.

Chapter 2
Bothell City Council: General Powers and Responsibilities

2.01 City Council Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety and general welfare of the citizenry. The City Council is the policy making and law-making body of the City. State law and local ordinances grant the powers and responsibilities of the Council.

It is important to note that the Council acts as a body and speaks with one "corporate voice." No member has any extraordinary powers beyond those of other members. While the Mayor has some additional ceremonial and presiding officer responsibilities as described below, when it comes to establishing policies, voting, and in other significant areas, all members are equal. It is also important to note that policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Council to a course of action. Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure the policy of the Council is upheld.

Actions of staff to pursue the policy direction established by a majority of Council do not reflect any bias against Councilmembers who held a minority opinion on an issue.

A. Council Non-Participation in Administration

In order to uphold the integrity of the council-manager form of government, and to provide proper checks and balances, members of the City Council shall refrain from becoming directly involved in the administrative affairs of the City. As the Council is the policy making body and the maker of local laws, its involvement in enforcement of ordinances would only damage the credibility of the system. RCW 35A.13.120 specifically prohibits interference by Councilmembers in the city's administrative service, including the hiring, firing, and work of city staff, with the exception of the City Manager.

Except for the purpose of inquiry, the Council and its members will deal with the administrative service solely through the City Manager or designee, and neither the Council nor any committee or member of a committee shall give orders to any subordinate of the City Manager. Subject to RCW 42.30.110 and the holding of executive sessions to discuss and review personnel matters, the Council is not prohibited, while in open session, from fully and freely discussing with the City Manager anything pertaining to appointments and removals of City officers, employees, and City affairs.

2.02 Role of Councilmembers

Members of the Bothell City Council are collectively responsible for establishing policy, adopting a biennial budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather is an effort to summarize the primary responsibilities of the Council.

A. Summary of Council Duties and Responsibilities as Provided in, but not Limited to, the Washington Administrative Code and Revised Code of Washington

1. Establish Policy
   a. Adopt goals and objectives
   b. Establish priorities for public services
   c. Approve/amend the operating and capital budgets
   d. Approve contracts over $10,000
   e. Adopt resolutions

2. Enact Local Laws
   a. Adopt ordinances

3. Supervise Appointed Officials
   a. Appoint City Manager
   b. Evaluate performance of City Manager
   c. Establish advisory boards and commissions
   d. Make appointments to advisory bodies
   e. Provide direction to advisory bodies

4. Provide Public Leadership
   a. Relate wishes of constituents to promote representative governance
   b. Mediate conflicting interests while building a consensus
   c. Call special elections as necessary
   d. Communicate the City's vision and goals to constituents
   e. Represent the City's interest at regional, county, state, and federal levels

5. Decision-Making
   a. Study problems
   b. Review alternatives
   c. Determine best course of public policy

2.03 Role of Mayor

A. Presiding Officer

The Mayor serves as the presiding officer and acts as chair at all meetings of the City Council. The Mayor may participate in all deliberations of the Council in the same manner as any other members and is expected to vote in all proceedings, unless a conflict of interest exists. The Mayor does not possess any power of veto. The Mayor may not move an action, but may second a motion.

B. Ceremonial Representative

Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. The Mayor is vested with the authority to initiate and execute proclamations. In the Mayor's absence, the Deputy Mayor assumes this responsibility. Should both the Mayor and Deputy Mayor be absent, the Mayor will appoint another Councilmember to assume this responsibility.

2.04 Absence of Mayor and Councilmembers

In the absence of the Mayor, the Deputy Mayor shall perform the duties of the Mayor. When both the Mayor and Deputy Mayor are absent, the Council may choose from among its members a person to serve as acting mayor, who shall, for the term of such absence, have the powers of the Mayor.

If the Mayor or other Councilmembers are absent from the City for more than 15 days, they shall notify the other Councilmembers and the City Manager of such absence.

2.05 Election of Officers

Procedures for electing officers are as follows:

A. Biennial Election of Mayor and Deputy Mayor

Biennially, at the first meeting of the new Council, councilmembers will choose a presiding officer from their number who will have the title of Mayor. In addition to the powers conferred upon him/her as Mayor, he/she will continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting will select a Mayor from their number for the unexpired term. Following the election of the Mayor, there will be an election for Deputy Mayor. The term of the Deputy Mayor will run concurrently with that of the Mayor.

B. Nominations

The City Clerk will conduct the election for Mayor. The City Clerk will call for nominations. Each member of the City Council will be permitted to nominate one (1) person, and nominations will not require a second. A nominee who wishes to decline the nomination will do so at this time. Nominations are then closed. The Mayor-elect will conduct the election for Deputy Mayor, and nominations will be made in the same manner described for the election of the Mayor.

C. Casting Ballots

Except when there is only one nominee, election will be by written ballot. Each ballot will contain the name of the Councilmember who cast it. The City Clerk will publicly announce the results of the election by reading each ballot into the record, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Thereafter, the City Clerk will record in the minutes of the meeting the manner in which each voting member of the Council cast his or her ballot. To be elected, a nominee must receive a majority vote of the members present.

D. Ties

Should there be a tie, there will be another round of voting. Rounds will continue as necessary until a nominee receives the majority vote of members present.

E. Resignation of Mayor or Deputy Mayor

If the Mayor or Deputy Mayor resign, the City Council will appoint a new Mayor or Deputy Mayor using the procedure outlined above.

2.06 Emergency Response

The Mayor shall sign any declarations of emergency.

2.07 Appointment of Officer

The City Council is responsible for appointing one position within the city organization--the City Manager. The City Manager serves at the pleasure of the Council. The City Manager is responsible for all personnel within the city organization, including the City Attorney, Municipal Court Judge, Municipal Prosecutor, and Public Defender. The City Manager's appointment of the Municipal Court Judge is subject to confirmation by the City Council.

2.08 Advisory Bodies

A. Appointments Made by the Council

Boards, commissions and citizen committees provide a great deal of assistance to the Bothell City Council when formulating public policy and transforming policy decisions into action. The City has several standing boards and commissions. In addition, special purpose committees and task forces are often appointed by the City Council to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad hoc committees will be dissolved upon completion of the intended task.

The procedures established in this manual reflect the policy of the City Council regarding the appointment of volunteer citizens to the various advisory bodies of the City. The establishment of these procedures ensures that well-qualified, responsible, and willing citizens are given the opportunity to serve the City and participate in the governing of their community.

The City Council is specifically empowered to create all advisory boards and commissions pursuant to the provisions of Chapter 35A (Optional Municipal Code), or such advisory boards or commissions not specifically enumerated, as the Council deems necessary or advisable. In the exercise of this power, it is the desire of the City Council to establish a consistent policy in its decision-making role to fairly and equitably evaluate those citizens of the community who demonstrate desire to serve on such boards or commissions.

1. For full-term vacancies, the following filing period is established: first Wednesday of January through second full week of February. The City Clerk will:

    a. Publicly announce the position vacancy and filing period by publication on the city's website.

b. Post notices of the position vacancy and filing period on/in the places established in Section 8.02 (b) of this manual.

c. Notify by email the Chairpersons of advisory boards and commissions and the associated staff liaison of the vacancy.

d. Notify incumbents by email whose terms are expiring.

2. For partial-term vacancies, a minimum 30-day filing period applies, with dates to be determined by the City Clerk. Partial-term vacancies will be filled as outlined in Section 2.08(A) (1a-c), above.

B. Qualifications, Terms of Service, Forms

Persons wishing to be considered for appointment or reappointment will submit to the City Clerk's Office an application on a form provided by that office. The Council will review applications and make appointments.

It is the policy of the City Council to evaluate each applicant on an objective basis, utilizing the following criteria:

1. Residency - Residency requirements for advisory boards and commissions are noted in applicable sections of the Bothell Municipal Code, and summarized on the Membership and Qualification Matrix appended hereto.

2. Sectional Composition - Normally, consideration should be given toward maintaining an equitable balance of community representation on all boards and commissions.

   The City Council will not appoint multiple members from the same family or household to a single board or commission, in order to avoid the reality or appearance of improper influence or favor.

   The City Council will not appoint members of Councilmembers' families or households to boards or commissions to avoid the appearance of favor and to increase community representation.

3. Occupation - The Council will attempt to maintain a broad mix of occupational backgrounds on all boards and commissions.

4. Knowledge of Municipal and Planning Process - When ranking equally qualified applicants, the Council will consider background experience and knowledge of the municipal process as appropriate to the position, in reaching its decisions.

5. Contributive Potential - The Council will evaluate the potential contribution that each applicant may make if appointed to a board or commission. Criteria to guide the Council in its evaluation may include:

   a. Ability to communicate

b. Desire to perform public service
c. Ability to express ideas, concepts, or philosophies
d. Desire to participate in decision-making process

6. Leadership Potential - Since each appointee may be called upon to serve as a Chair, the Council will evaluate leadership abilities, such as:

   a. Past or present leadership experience (current employment, special interests, etc.)
   b. Past or present participation in community services
   c. Expressed interest in a leadership role

7. The City Council will not appoint persons to serve as members of more than one board or commission at the same time; however, persons serving on a board or commission who have requested appointment to another board or commission position may be appointed to such position if they, concurrent with the appointment, resign from the board or commission position they are holding at the time of the new appointment.

C. Reappointment Criteria

A staff liaison shall be appointed to each board and commission At such time as reappointment is considered (or at any time during their term of service), the staff liaison may notify the City Manager regarding the following:..

1. Regularity of Attendance
2. Understanding of board or commission function
3. Demonstrated leadership
4. Effectiveness
5. Demonstrated contribution during past term of office on issues, programs, policies, etc., of the advisory board or commission
6. Objectivity

D. Council Action

1. Council Interview Period - It shall be the privilege of the Council to personally interview each applicant individually, at a time and place to be designated by the Council.

2. Council Evaluation & Selection - After each applicant or member is evaluated, the Council will deliberate and reach a decision at its earliest convenience, using the following procedure:

   A ballot sheet will be provided by the City Clerk. Council will cast their votes and submit their ballots to the Clerk and take a brief recess while staff tally's the votes. Applicants must receive a majority vote of councilmembers present for appointment. Council will then ratify the results.

   All written ballots used to select board and commission members will be retained with the agenda packet materials for that Council meeting.

3. Decision & Announcement - Each applicant will be notified by email of the decision of the Council. The City Clerk will also notify the associated chairperson and staff liaison regarding Council appointments.

4. Orientation of New Members - It is important for members of Board & Commissions to gain an understanding of the full range of services and programs provided by the City. Annually, once new advisory board members have been appointed, the City Attorney and City Clerk will host an orientation program that provides an overview of duties such as the Open Public Meetings Act (OPMA), Public Records Act (PRA). This training will also include email security and phishing training provided by a member of the IS staff. Newly appointed board members must complete OPMA/PRA training within 90 days of appointment. Thereafter members must have refresher training every 4 years.

5. City Email Accounts – Upon appointment to a Board or Commission, members will receive a city email account to use for conducting City business. Members must not use their personal email accounts for city business nor use their city accounts for personal business.

6. Reports to Council – Each Board and Commission will be assigned a Council liaison who may report to the full Council regarding board and commission activities. The Council may also request Board and Commissions provide written reports, or briefings at a City Council meeting.

E. Resignations

In the interest of timely noticing of vacancies, and to minimize the impact of such vacancies on boards and commissions, the City Council delegates to the Mayor the authority to accept resignations. Following the Mayor's acceptance of the resignation, the City Clerk is authorized to advertise such vacancies according to the process set forth in Section 2.08(A).

F. Cause for Dismissal

Board and Commission Members may be dismissed from service for failure to attend meetings (3 unexcused absences), or failure to complete OPMA/PRA training pursuant to RCW42.30 and 42.56 within 90 days of appointment. Members may also be dismissed for using personal devices to conduct city business and/or failure to use city email accounts.

G. Representation by Councilmembers on Outside/Regional Boards, Commissions or Committees

The City Council is often requested to appoint Councilmembers to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies. The City Council appoints members to some of these groups on an as-needed or as-requested basis.

Membership appointment to these groups shall be made by consensus of the Council for a 2-year period. Council will make appointments in early January of even numbered years. If more than one Councilmember desires to serve as a member of a particular outside group, the member for that group will be appointed by a majority vote of the Council.

Where applicable, Council will appoint an alternate to attend outside boards, councils, commissions, or committees. The main delegate will notify the alternate as soon as possible after he/she realizes they will be unable to attend an upcoming meeting of the outside group.

Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

H. Rules of Conduct

By accepting appointment to any City board or commission, members thereby agree to conduct themselves in accordance with the following rules of conduct.

1. All members of City boards and commissions will abide by all applicable state laws, City ordinances, and other doctrines relating to the conduct of board or commission members, including, but not limited to, the Appearance of Fairness Doctrine, conflict of interest statutes, and the State Open Public Meetings Act.

2. Members of City boards and commissions will not testify in their capacity as a board or commission member, before anyother board, commission, administrative officer or agency of the federal government, the State of Washington, or of any county or other municipal corporation, including cities and towns, except as hereinafter provided. Exceptions to the policy set forth above shall be as follows:

    a. If the member is testifying in such a capacity pursuant to a lawfully issued subpoena; or
    b. In the event the board or commission has designated the member or members to act as a spokesperson for the board or commission to explain the majority vote and recommendation of that board or commission; or

    c. In the event the City Council appoints the member or members to represent the City before another tribunal.

3. Notwithstanding the foregoing, nothing contained herein is intended to preclude a board or commission member from speaking as an individual citizen, so long as the following conditions are met:

    a. The individual clearly identifies that he/she is speaking only as an individual citizen and is not in any manner representing or speaking on behalf of the board or commission of which he/she is a member; and

    b. No board or commission member testifies orally or in writing as to any quasi-judicial matter being heard, or having the possibility of being heard, by the board or commission of which the person is a member.

I. Councilmembers' Role and Relationship with City Advisory Bodies

1. In accordance with the provisions of state law, Councilmembers shall not be appointed to City advisory bodies concurrent with their term of office as Councilmember.

2. Unless specifically authorized by majority vote of a quorum of the Council, no Councilmember shall be authorized to state or testify to the policy or position of the Council before any advisory board or commission of the City.

3. Limitations on the conduct of Councilmembers before the City's advisory boards and commissions should be voluntarily undertaken in order to assure public confidence in the decision-making process and avoid the appearance of bias,prejudice, or improper influence. Toward this purpose, the following protocol should be observed:

a. Councilmembers shall not testify in quasi-judicial matters pending before any advisory board or commission that will receive, or could potentially receive, future appeal or review before the City Council. Violation of this protocol may require the Councilmember to disqualify him or herself from participating in any appeal or review proceedings before the City Council.

b. Councilmembers, in their capacity as private citizens, should refrain from providing testimony in legislative or administrative matters pending before any advisory board that will receive, or could potentially receive, future review or other action before the Council. Where a Councilmember elects to provide such testimony, the following rules shall apply:

(i) The Councilmember shall declare at the outset and upon the record that they are present in his or her private capacity as an interested citizen, and not on behalf or at the request of the City Council.
(ii) The Councilmember shall refrain from stating or implying that their position or opinion is that of the City Council.
(iii) The Councilmember shall refrain from directing City staff or the advisory body to take any action on their behalf.
(iv) The Councilmember shall observe any rules of procedure or protocol that apply to any other private citizen testifying before the advisory board.

2.09 Incompatibility of Offices

There is no single statutory provision governing dual office holding. Statutory law is usually silent on that question except where the legislature has deemed it best either to prohibit or permit particular offices to be held by the same person regardless of whether they may or may not be compatible under common law principles. Chapters 35.24 and 35A.12 RCW expressly permit the offices of clerk and treasurer to be combined in certain cases. However, RCW 35A.12.030 and 35A.13.020 prohibit a mayor or Councilmember in a code city from holding any other public office or employment within Bothell's government "except as permitted under the provisions of Chapter 42.23 RCW." A statute expressly permits Councilmembers to hold the position of volunteer fire fighter (but not chief or other officer). RCW 35A.13.060 expressly authorizes a city manager to

serve two or more cities in that capacity at the same time, but also provides that a city council may require the city manager to devote his or her full time to the affairs of that code city.

For additional information or clarification, please refer to Knowing the Territory, published by the Municipal Research & Services Center.

Chapter 3
Support Provided to City Council

3.01 Staff Liaison

Staff support to members of the City Council is provided through the City Clerk's Office. Support includes updating Council webpages, registration to various conferences and meetings and forwarding information to all councilmembers in order that Council does not violate the OPMA. Councilmembers keep their own calendars and make their own appointments. Should Council requests of staff require significant time commitments or deviation from regular work activities, Councilmembers will consult with the City Manager prior to making requests.

3.02 Electronic Devices

To enhance Councilmembers' service to the community and their ability to communicate with staff and the public, the City provides meeting facilities and office equipment for City business.

The Information Services Division (IS) will provide electronic devices at the request of Councilmembers, for official City use. Information Services will ensure that all appropriate software is installed and will also provide an orientation in the use of computers and related software. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Personal media and programs cannot be stored on City computers. Councilmembers must adhere to all policies under the City of Bothell Information Services Security Polices.

Throughout Councilmember terms, City equipment is subject to audit. Virus protection software must not be disabled at any time on City equipment and non-city programs or media found during audits will be removed. When individual Councilmembers have completed their term of office, IS staff will retrieve City computers, software, and modems.

The complete policy can be viewed here: Personnel Policy 10.05 - Electronic Communication

3.03 Meeting Rooms

Council has a shared office at City Hall. A schedule of office hours has been established which is published on the website and with the City Clerk. Council may reserve this room during non-office hours by contacting the City Clerk. There are also numerous Town Hall meeting rooms on the first floor of City Hall which Council may reserve by contacting City Hall.

3.04 Mail, Deliveries

Members of the City Council receive a large volume of mail and other materials that are delivered primarily through the use of mailboxes located in the Council office. Councilmembers are encouraged to check mailboxes often. In addition, City staff will email or personally deliver materials that are time-sensitive to a member's home or office, if appropriate. Correspondence addressed to one Councilmember will be copied for all Councilmembers.

Chapter 4
Financial Matters

4.01 Council Compensation

The municipal code provides for payment of a salary to members of the City Council. A seated City Council may not increase or decrease its own compensation. Councils may only pass an ordinance to adjust the compensation of an incoming City Council (Constitutional Article 2, Section 25 and Article 30, Section 1). Currently, Council Salaries are set by a Salary Commission as provided in BMC Chapter 2.92 and RCW 35.21.015.

4.02 Budget

The biennial City budget includes appropriations for expenses necessary for members to undertake official City business. Funding provided includes membership in professional organizations, attendance at conferences or educational seminars, purchase of publications and office supplies. Reference is made to the attached City Manager's budget instructions. [Link to Budget]

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the State Public Disclosure Commission within two weeks of filing a nomination paper. When appointed to fill a vacancy on the Council, the appointee shall file a financial disclosure statement with the Commission, covering the preceding 12-month period, within two weeks of being so appointed. Councilmembers are required to file a financial disclosure statement with the Commission on an annual basis after January 1 and before April 15 of each year covering the previous calendar year. Councilmembers whose terms expire on December 31 shall file the statement for the year that ended on that December 31. Statements filed in any of the above cases will be available for public inspection.

Failure to file or filing a false or incomplete financial disclosure statement, if done knowingly, is a Class 1 Misdemeanor. There are also civil penalties for violations.

4.04 Travel Policy

Members of the City Council and City boards and commissions are subject to the City's Travel Policy. Personnel Policy 8.5 – Travel

Chapter 5
Communications

5.01 Overview

Perhaps the most fundamental role of a Councilmember is communication:

- Communication with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents;
- Communication with staff to provide policy direction and to gain an understanding of the implications of various policy alternatives.

Because the City Council performs as a body (that is, acting based on the will of the majority as opposed to individuals), it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public should be so advised.

5.02 Correspondence from Councilmembers

Members of the City Council will often be called upon to write letters to citizens, businesses, or other public agencies. Typically, the Mayor will be charged with transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Individual members of Council will often prepare letters for constituents in response to inquiries, or to provide requested information. City letterhead is available for this purpose, and staff can assist in the preparation of such correspondence.

On occasion, members may wish to correspond on an issue on which the Council has yet to take a position, or about an issue for which the Council has no position. In these circumstances, members should clearly indicate that they are not speaking for the City Council as a whole, but for themselves as one member of Council. City letterhead and office support may be utilized in these circumstances.

Councilmembers may occasionally be asked to prepare letters of recommendation for students or others seeking employment or appointment. It is appropriate for Councilmembers to utilize City letterhead and their Council titles for such letters.

City letterhead and staff support cannot be utilized for personal or political purposes.

5.03 Local Ballot Measures

At times, initiatives may be placed on the ballots that affect City Council policy. There are restrictions regarding what actions the City may take on ballot measures. Specifically, state statutes prohibit the City from using its personnel, equipment, materials, buildings, or other resources to influence the outcome of elections. What the City can do is distribute informational reports or pamphlets for the purpose of informing the public of the facts of an issue.

5.04 Proclamations

Proclamations are issued by the Mayor as a ceremonial commemoration of an event or issue. Proclamations are not statements of policy, and do not require the approval or action of the Council. Proclamations are a manner in which the City can make special recognition of an individual, event, or issue. Proclamation requests will be submitted through the City Clerks Office and forwarded to the Mayor/City Manager for approval.

5.05 State Public Disclosure Act/Open Public Meetings Act

To ensure that business communications submitted to and by elected and appointed officials comply with the State Public Disclosure Act, RCW 42.17, and the State Open Public Meetings Act, RCW 42.30, the following is set forth:

A. Communications - Generally

All letters, memoranda, and interactive computer communication involving City Councilmembers and members of advisory boards and commissions, the subject of which relates to the conduct of government or the performance of any governmental function, with few exceptions as stated by the Public Disclosure Act, are public records. Copies of such letters, memoranda, and interactive computer communication may not be provided to the public or news media unless a public disclosure request has first been filed with the City Clerk.

B. Written Communications

Written letters and memoranda received by the City, addressed to a Councilmember or the Council as a body, will be photocopied and provided to all City Councilmembers, and a copy kept according to the City's Records Retention Schedule.

C. Electronic Communications

1. Informal messages with no retention value and that do not relate to the functional responsibility of the recipient or sender as a public official, such as meeting notices, reminders, telephone messages and informal notes, do not constitute a public record. Users should delete these messages once their administrative purpose is served.

2. All other messages that relate to the functional responsibility of the recipient or sender as a public official constitute a public record. Such records are subject to public inspection and copying.

   - If a citizen sends an e-mail to a Councilmember and requests that it be included in the record of a particular public hearing, the Councilmember will forward said e-mail to: CityClerk@bothellwa.gov.
   - If a Councilmember wishes that an e-mail be distributed to a City staff member, the Councilmember will forward said e-mail to the City Manager.
   - Staff will not review e-mail unless a public records request is received.

3. E-mail communications that are intended to be shared among four or more Councilmembers, whether concurrently or serially must be considered in light of the Open Public Meetings Act. If the intended purpose of the e-mail is to have a discussion that should be held at an open meeting, the electronic discussion should not occur. Further, the use of e-mail communication to form a collective decision of the Council is inappropriate.

4. E-mail should be used cautiously when seeking legal advice or to discuss matters of pending litigation or other "confidential" City business. In general, e-mail is discoverable in litigation, and even deleted e-mail is not necessarily removed from the system. Confidential e-mail communications should not be shared with individuals other than the intended recipients, or the attorney-client privilege protecting the document from disclosure may be waived.

5. E-mail between Councilmembers and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the City Clerk.

6. E-mail will not be used for personal use, since Councilmembers' conventional e-mail addresses include the City's "return address."

5.06 ***Bothell Bridge*** – "Council Corner"

Each issue of the City's official newsletter, *Bothell Bridge* will contain a column called "Council Corner." This is an opportunity for Councilmembers to write articles on topics of interest to them and the Bothell community. The procedure of scheduling, writing and submittal is set forth below:

1. The Public Information Officer will provide a yearly schedule that shows the column rotation and which Councilmember may write for each edition.
2. The Councilmember column rotation is based on election season and equal writing opportunities.
3. Columns may consist of 150 to 200 words and are submitted to the Public Information Officer according to the provided rotation schedule.
4. Staff will review columns for grammar, punctuation, phrasing etc., but will not edit Councilmembers' columns.

Chapter 6
Conflicts of Interest, Appearance of Fairness Doctrine, and Liability of Elected Officials

6.01 Conflicts of Interest

The conflict of interest law is one of the most complicated laws on the books. To understand its effect on a Councilmember's actions, it is suggested that members discuss the law and potential conflicts with a private attorney or the City Attorney. It is imperative that Councilmembers identify in advance what their conflicts are.

It is illegal to fail to declare a conflict of interest, or to participate or otherwise be involved in discussions on issues or contracts where such an interest exists. Violations of the conflict of interest law may result in significant penalties, including criminal prosecution.

In circumstances where only a "remote interest" (see below) exists, after disclosure of the interest to other Councilmembers and in the meeting minutes, the Council may approve the contract to which a Councilmember has a remote interest, absent participation in the voting by the Councilmember with the remote interest, but only if the Councilmember refrains from any attempt to influence other members to approve the contract.

A. Applicability

All City officers, elected and appointed, are subject to the conflict of interest law in RCW 42.23. This includes Councilmembers.

B. Definition

Remote Interests are so minor that they do not constitute illegal conflicts of interest. Remote interests exist when a City official is:

- a non-salaried officer or member of a nonprofit corporation doing business or requesting money from the City. Therefore, being such an officer or member would not constitute a conflict
- the landlord or tenant of a contracting party. For instance, a Councilmember may lease office space to a party which has a private interest in a public matter without it resulting in a conflict of interest
- the owner of less than 1 percent of the shares of a corporation or a cooperative doing business with the City
- being reimbursed only for actual and necessary expenses incurred in performance of official duties

C. Acts not Constituting a Conflict of Interest

- receiving municipal services on the same terms and conditions as if not a City official. Thus, when a Councilmember who owns a business within the City votes for or against an increase in the business license fees, a conflict would not exist because this action would apply to all businesses in the corporate limits
- an officer or employee of another political subdivision or public agency unless it is the same governmental entity being served who is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Therefore, a Councilmember who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the Councilmember
- a member of a trade, business, occupation, profession, or class of persons and has no greater interest than the other members of that trade, business, occupation, or class of persons. A class must consist of at least ten members to qualify the interest as remote.

A City official may sell equipment, material, supplies, or services to the City if this is done through an award or contract let after public competitive bidding. An exception to this law permits the City Council to approve a policy on an annual basis to allow the City to purchase supplies, materials, and equipment from a member of the Council without going to public competitive bid as long as the single transaction does not exceed $300 and the annual total of such transactions does not exceed $1,000.

D. Declaration of a Conflict

When a substantial interest exists, the City official must:

1. Refrain from voting or in any way influencing a decision of the City Council; and
2. Declare that a conflict of interest exists and make it known in the official records of the City.

Should a situation arise wherein a majority of Councilmembers or a majority of a quorum of those present at a Council meeting have a substantial conflict of interest, state law provides that if the conflict of interest statutes prevent the City Council from acting as required by law in its official capacity, such action shall be allowed if the members of the Council with the apparent conflicts of interest make them known.

E. City Attorney Opinions

A Councilmember's request for an opinion from the City Attorney concerning conflict of interest is confidential. However, formal final opinions are a matter of public record and must be filed with the City Clerk. This filing requirement does not apply to verbal communications between Councilmembers and the City Attorney.

Councilmembers may seek advice from a private attorney, at their own expense, concerning potential conflicts. In such cases, no disclosure policy would apply.

F. Filing of Disclosures

The City Clerk maintains a file for all disclosures and legal opinions of conflicts of interest.

G. Apparent Conflict of Interest in Litigation Matters

A Councilmember who actively supports a position contrary to an official City of Bothell action or position, as adopted or ratified by a majority of the City Council, should recuse themselves and not participate in any vote, deliberation, executive session, or distribution of confidential information regarding further consideration or action in that matter once litigation has been served or filed regarding the matter. Litigation shall include but is not limited to legal action or appeals of any type including Growth Management Hearings Board appeals.

- The fact that a Councilmember voted in opposition or expressed an opinion in opposition to the official action or position prior to the filing or service of litigation shall not, by itself, be sufficient to trigger the need for recusal or non-participation.
- Once litigation has been served or filed, communication regarding the case with anyone other than City staff or legal counsel involved in the litigation of the case is discouraged during the pendency of the litigation.
- Councilmembers shall voluntarily recuse themselves and choose not to participate under the conditions listed above; however, if Councilmembers fail to voluntarily recuse themselves or withdraw from participation, any other Councilmember may challenge the ongoing participation and request the challenged Councilmember to disclose any communication and participation with regard to the pending litigation.
- If the apparent conflict still cannot be resolved voluntarily after such challenge, amajority plus one of the council as a whole may vote to sanction and remove the challenged Councilmember from further participation with regard to the pending litigation on the basis of an apparent conflict of interest.
- Later legislative participation by a previously recused or sanctioned Councilmember, related to the same issue, is not prevented by the provisions of this subsection once the conflict no longer exists or the litigation has terminated.

6.02 Liability

The City must always approach its responsibilities in a manner that reduces risk to all involved. Nevertheless, with such a wide variety of high profile services (i.e., police, parks, roads, land use), risk cannot be eliminated. To better manage insurance and risk, the City participates in risk- and loss-control activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in the member being personally liable for damages which would not be covered by the City's insurance. Examples may include discrimination, harassment, or fraud.

Chapter 2.25 of the Bothell Municipal Code addresses indemnification of employees and officers.

Elected and appointed officials will participate in risk management training to reduce liability due to actions taken, especially in the areas of land use.

Chapter 7
Interaction with City Staff/Officials

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

The City Council also supports and acknowledges that Council and the City Manager are most effective when working as a team and as such the Council endeavors to support mutual respect between the City Council and City staff by creating the organizational teamwork necessary for successful implementation of the Council's policies and programs.

7.02 Council-Manager Plan of Government

Bothell has a Council-Manager plan of government. Basically, with this structure, the City Council's role is to establish city policies and priorities. The Council appoints a City Manager to implement those policies and undertake the administration of the organization.

The City Manager is appointed by the City Council to enforce its laws, to direct the daily operations of city government, to prepare and monitor the principal budget, and to implement the policies and programs initiated by the City Council. The City Manager is responsible to the City Council, rather than to individual Councilmembers, and directs and coordinates the various departments. The City Manager is responsible for appointing all department directors and authorizing all other personnel positions. The City Council authorizes positions through the budget process; based upon that authorization, the City Manager makes the appointments. The City Manager appoints members to the Civil Service Commission.

The Council-Manager plan of government is outlined in RCW Chapter 35A.13. The powers and duties of the City Manager include:

- General supervision over the administrative affairs of the city
- Appoint and remove at any time all department directors and employees
- Attend all meetings of the Council at which the manager's attendance may be required by that body
- See that all laws and ordinances are faithfully executed, subject to the authority which the Council may grant the Mayor to maintain law and order in times of emergency
- Recommend for adoption by the Council such measures as the manager may deem necessary or expedient
- Prepare and submit to the Council such reports as may be required by that body, or as deemed advisable to submit
- Keep the Council fully advised of the financial condition of the City and its future needs
- Prepare and submit to the Council a proposed budget for the fiscal year, and to be responsible for its administration upon adoption
- Perform such other duties as the Council may determine by ordinance or resolution
- Implements and administers City Council policy

7.03 City Council Non-interference

The City Council is to work through the City Manager when dealing with administrative services of the City.

In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence, personnel matters that are under the direction of the City Manager. Nor shall the City Council be involved in, or influence, the purchase of any supplies beyond the requirements of the City procurement code/procedures.

Except for the purpose of inquiry, the Council and its members will deal with the administrative service solely through the City Manager or designee, and neither the Council nor any committee or member of a committee shall give orders to any subordinate of the City Manager. Subject to RCW 42.30.110 and the holding of executive sessions to discuss and review personnel matters, the Council is not prohibited, while in open session, from fully and freely discussing with the City Manager anything pertaining to appointments and removals of City officers and employees and City affairs.

7.04 City Council/City Manager Relationship

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters. Disagreements should be expressed in policy terms, rather than in terms that question satisfaction with or support of the City Manager.

The City Manager respects and is sensitive to the policy responsibilities of the City Council and acknowledges that the final responsibility for establishing the policy direction of the City is held by the City Council.

A. Performance Evaluation

The City Council is to evaluate the City Manager on an annual basis to ensure that both the City Council and City Manager are in agreement about performance and goals based upon mutual trust and common objectives. The City Manager's performance is evaluated based upon a mutually agreed upon work plan.

7.05 City Council/City Staff Relationship

City Councilmember contact with City staff members, inclusive of the City Manager, will be during regular business hours, except in the case of an emergency.

7.06 Code of Ethics

The City Manager is subject to a professional code of ethics as a member of the International City/County Management Association (ICMA). It should be noted that this code binds the City Manager to certain practices that are designed to ensure actions are in support of the City's best interests. Violations of such principles can result in censure by ICMA. This code is posted in the City Manager's office. ICMA Code of Ethics.

7.07 City Council/City Attorney Relationship

The City Attorney, similar to other Department Director positions, is appointed by the City Manager. Legal professional services performed under contract or agreement shall be consistent with the City's adopted Procurement Policy. The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City. The general legal responsibilities of the City Attorney are to:

1. provide legal assistance necessary for formulation and implementation of legislative policies and projects;
2. represent the City's interest, as determined by the City Council, in litigation, administrative hearings, negotiations, and similar proceedings;
3. prepare or approve as to form ordinances, resolutions, contracts, and other legal documents to best reflect and implement the purposes and intentions of the City Council; and
4. keep City Council and staff apprised of court rulings and legislation affecting the legal interest of the City.

It is important to note that the City Attorney does not represent individual members of Council, but rather the City Council as a whole.

7.08 Roles and Information Flow

A. Council Roles

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

Members of the City Council must avoid intrusion into those areas that are the responsibility of staff. Individual Councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, and executing department priorities without the prior knowledge and approval of the City Council as a whole. This is necessary to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal. If a Councilmember wishes to influence the actions, decisions, recommendations, workloads, work schedule, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy. .All Councilmembers with concerns affecting the community of Bothell should bring those concerns to the full Council before contacting an outside agency.

B. Access to Information

The City Manager is the information liaison between Council and City staff. Requests for information from Councilmembers are to be directed to the City Manager and will be responded to promptly. The information requested will be copied to all members of Council so that each member may be equally informed. The sharing of information with City Council is one of the City Manager's highest priorities.

There are limited restrictions when information cannot be provided. The City is legally bound not to release certain confidential personnel information. Likewise, certain aspects of police department affairs (i.e., access to restricted or confidential information related to crimes) may not be available to members of the City Council.

C. Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council and in keeping the Council informed. Staff is obligated to take guidance and direction only from the City Manager or Department Director. This direction follows the policy guidance of the City Council as a whole. Staff is directed to reject any attempts of individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

City staff will make every effort to respond in a timely and professional manner to all requests for information or assistance made by individual Councilmembers; provided that, in the judgment of the City Manager, the request is not of a magnitude, either in terms of workload or policy, which would require that it would be more appropriately assigned to staff through the direction of the full City Council.

D. Significant Requests

No Councilmember shall request or direct the City Manager or Department Directors to initiate any action or prepare any report that is significant in nature, or initiate any significant project or study without the consent of a majority of the Council. The City Manager shall determine whether or not a matter is significant.

7.09 Dissemination of Information

In addition to regular, comprehensive memoranda written by the City Manager directly to City Council concerning all aspects of City operations (exclusive of confidential personnel issues), all Councilmembers receive copies of all correspondence received by the City Manager that will assist in them in their policy-making role. The City Manager also provides other documents to Council on a regular basis, such as status reports and executive summaries,

A variety of methods are used to share information with Council. Workshops and study sessions are held to provide detailed presentations of matters. Council/staff retreats serve to focus on topics and enhance information exchange. The City Manager's open-door policy allows individual Councilmembers to meet with the Manager on an impromptu or one-on-one basis.

7.10 Magnitude of Information Request

Any information, service-related needs, or policy positions perceived as necessary by individual Councilmembers that cannot be fulfilled based upon the above guidelines should be considered as an item for the agenda of a City Council meeting. If so directed by action of the Council, staff will proceed to complete the work within a Council-established timeline.

7.11 Staff Relationship to Advisory Bodies

Staff support and assistance may be provided to advisory boards, commissions, and task forces. Advisory bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager. The members of the commissions, boards, or committees are responsible for the functions of the advisory body. The chairperson is responsible for committee compliance with the municipal code and/or committee bylaws. Staff members are to assist the advisory body chair to ensure appropriate compliance with state and local laws and regulations.

Staff support includes: (1) preparation of a summary agenda after approval by the chairperson; (2) preparation of reports providing a brief background of the issues, a list of alternatives, recommendations, and appropriate backup materials, if necessary; and (3) preparation of minutes of advisory body meetings. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues.

Advisory bodies wishing to communicate recommendations to the City Council shall do so through adopted Council agenda procedures. ~~2.08(d)~~In addition, when an advisory body wishes to correspond with an outside agency, correspondence shall be reviewed and approved by the City Council.

7.12 Restrictions on Political Involvement by Staff

Bothell is a nonpartisan local government. Professional staff formulates recommendations in compliance with Council policy for the good of the community, not influenced by political factors. For this reason, it is very important to understand the restrictions of political involvement of staff.

By working for the City, staff members do not surrender rights to be involved in political activities. Employees may privately express their personal opinions. They may register to vote, sign nominating or recall petitions, and they may vote in any election.

7.13 Council Attendance Policy

RCW 35A.13.020 (Council-Manager Plan of Government) directs us to RCW 35A.12.060 (Mayor-Council Plan of Government) - Vacancy for Nonattendance. A council position shall become vacant if the Councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.

At the start of each City Council meeting, the Mayor or City Clerk, or designee, will call the roll. Any absent Councilmember who has called the Mayor or City Manager's Office prior to 5:00 p.m. on the day of the meeting to advise of such absence will be deemed excused.

7.14 Attendance via Speakerphone (AVS)

From time to time, a Councilmember will not be able to be physically present at a Council meeting, but will want to be involved in the discussion and/or decision on a particular agenda item. The procedure and guidelines for permitting a Councilmember to attend a Council meeting via speakerphone are as follows:

A. The Rare Occasion

Attendance via speakerphone should be the rare exception, not the rule, and AVS is limited twice a year per Councilmember. Examples of situations where AVS would be appropriate include, but are not limited to:

- An agenda item is time sensitive, and AVS is needed for a quorum;
- An agenda item is of very high importance to the Councilmember that cannot be physically present;
- It is important for all Councilmembers to be involved in a decision, but one Councilmember is unable to be physically present.
- AVS shall be limited to one agenda item, not the entire Council meeting.

B. Notification

If a Councilmember wishes to attend a Council meeting via speakerphone for an agenda item, the Councilmember should notify Council of his or her intent at the Council meeting prior to the meeting for which they wish to attend via speakerphone. This notification should be made during the Council's review of the projected agenda.

If that is not possible, the Councilmember should notify the City Manager of his or her wish to attend a Council meeting via speakerphone for an agenda item not later than the business day prior to the Council meeting for which he or she wishes to attend via speakerphone. With less notice, it may not be possible to make the necessary arrangements to allow attendance via speakerphone. Attendance via AVS will be reflected in the minutes.

Chapter 8
City Council Meetings

The City Council's collective policy and law-making powers are put into action at the council meetings. t is here that the Council conducts its business. The opportunity for citizens to be heard, the availability of local officials to the citizenry, and the openness of council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Regular meetings are held the first, second, and third Tuesdays of each month at 6:00 p.m., in the Bothell Council Chambers, 18415-101st Ave. NE, Bothell. The second Tuesday is intended to be reserved as a study session. Should these days happen to be designated as a legal holiday, the Council meeting will be held the fourth Tuesday of the month. Audience participation is allowed during the course of any study session, if permitted by the consent of a majority of the council present, and no final action shall be taken on any matter at any study session.

8.02 Public Notice of Meetings and Hearings

Pursuant to RCW 35.22.288, cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Bothell is as follows:

A. Notices

Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council or the City's Boards and Commissions shall be given one publication notice containing the time, place, date, subject, and body before whom the hearing is to be held, in the City's official newspaper at least ten (10) days before the date set for the hearing.

B. Preliminary Agenda of Council Meeting

The public shall be notified of the preliminary agenda for the forthcoming regular City Council meeting by posting a copy of the agenda in the following public places in the City at least 24 hours in advance of the meeting:

- Bothell City Hall – Elevator Vestibule
  18415 - 101st Avenue NE
  Bothell, WA 98011

- The City's Official Website: www.bothellwa.gov

C. Duties of City Clerk

The City Clerk is directed to publish notices and post agendas as required by Section 8.02 of the Bothell City Council Protocol Manual

RCW 42.30.080 addresses the subject of special meetings. For special meetings, only those items specifically listed on the agenda may be discussed, considered, or decided.

8.03 Special Meetings

Special meetings may be called by either the Mayor or Deputy Mayor, or by the written request of four Councilmembers. Notice of a special meeting will be made by the City Clerk by delivering personally, by mail, or by email written notice to each member of the Council and to each local newspaper of general circulation of all special meetings at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted.

The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical, and increase the likelihood of such injury or damage.

At all regular and special meetings, public comments are invited during a public hearing before or during consideration of any item on the agenda. Public comment is appropriate on any matter within the jurisdiction of the City Council.

8.04 Placing Items on the Agenda

~~*A. Agenda Planning Committee*~~

Councilmembers interested in adding items to a council agenda may bring their items forward on a quarterly basis during the quarterly goals scorecard update. This will give the Council the opportunity to review the current workload, discuss the item being considered, determine if staff capacity and resources are available, reprioritize workloads if necessary and vote to add the item to the scorecard as a strategic objective. ~~All matters to be presented to the City Council at its regular meetings are reviewed by the City Manager and the Executive Leadership Team. The City Council may change the order of business on the Projected Agendas, when they deem it to be of a greater public benefit to facilitate public participation.~~

~~Requests of items for consideration on the projected council agenda may be made by any one of the following methods:~~

- ~~Council Consensus~~
- ~~By any two Councilmembers~~
- ~~By a Council Committee~~
- ~~By the Mayor~~
- ~~By an Advisory Board or Commission~~
- ~~Via a written citizen request~~

~~The Mayor and City Manager will review all agenda requests prior to regular meetings and will have final approval of all items.~~

~~Requests (oral or in writing) shall be given at least 15 working days prior to the meeting to allow for sufficient time for research and preparation.~~

B Emergency Items

Emergency items may be added to an agenda in accordance with state law. Emergency items are only those matters immediately affecting the public health, safety and welfare of the community, such as widespread civil disorder, disasters, and other severe emergencies. The reason(s) for adding an emergency item to the agenda shall be announced publicly at the meeting, and the issue shall be included in the minutes of the meeting.

8.05 Development of the Agenda

Given the rigorous time frame for agenda development, it is extremely difficult for staff to compile or prepare information requested at a Tuesday night meeting in time for the next deadline. The Council will receive follow-up information at the second Council meeting following the date it is requested. This would allow staff sufficient time to prepare reports that require additional investigative research and/or additional time due to complexity of subject matter.

8.06 Audio Recording of Meetings

The City Clerk, or designee, shall make and keep audio recordings of all meetings of the Bothell City Council, except those meetings or portions of meetings conducted in Executive Session, or unless a motion is passed to suspend audio recording of a meeting. Recordings and related records of all City Council meetings, except as referenced above, shall be retained by the City in accordance with the Washington State Records Retention Schedule.

8.07 Order of Business – Regular Meetings

The City Council, by adoption of this manual, establishes the general order of meetings. This section summarizes each meeting component. The Council may, at any time by consensus, rearrange the agenda order to allow for better flow given the items being discussed.

Call to Order/Flag Salute

1. Meeting Agenda Approval
   This is the time when Councilmembers or the City Manager may withdraw identify agenda items to be continued, withdrawn, or added.. ~~A simple majority of those present may vote to consider items in a different order.~~

2. Presentations, Reports and Briefings

   a. Public Engagement Opportunities

   b. Proclamations

   c. Special Presentations

   Special Presentations are usually by outside agencies attending meetings to give updates on regional issues that effect Bothell or may be presented to recognize a group/individual or program.

d. Staff Briefings

Staff briefings allow staff to update the Council and public on issues/items they are working on which might not otherwise come before the City Council but are of interest regarding the goings-on of the city. As the name implies, these shall be brief, about 5 minutes.

e. /City Manager Reports

f. City Council Reports

This is an opportunity for Councilmembers to update each other and the public on outside committee activities.

3. Visitor Comment

Persons addressing the Council, who are not specifically scheduled on the agenda will be invited by the Mayor to the podium. Speakers will limit their remarks to 3 minutes, unless a longer period is permitted by Council. No speaker may convey or donate his or her time for speaking to another speaker. If many people wish to speak to a particular issue, Council may choose:

1) To limit the total amount of time dedicated to that single issue; and/or
2) continue the time for visitor comments on that issue to a future Council meeting;
3) In the event of single subject group comment, at the discretion of the presiding officer, single time allocation for a spokesperson greater than three (3) minutes can be allowed.
4) Groups that desire to designate a spokesperson shall submit to the presiding officer, prior to comment, a list of present group constituents or others in agreement so that duplication will not occur.

Speakers are asked to sign the "Sign-in Sheet" provided.

Written comments may be submitted into the record of a Council meeting by presenting the written document to the Clerk of the Meeting. A copy of the document will be provided to each Councilmember; the document will not be read aloud.

The following language will be added to the published agenda under "Visitor Comment:" <u>During this item, the Mayor will invite visitor comment. Each speaker will be granted 3 minutes. When appropriate, the Mayor may direct City Staff to respond with statement of factual information or existing city policy. Public comment will not be taken on items that the Council has previously considered in a public hearing.</u>

The Mayor has the authority to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct and to enforce the rules. The Mayor may command assistance of any peace officer of the City to enforce all lawful orders of the Mayor to restore order at any meeting.

Citizens with complaints, concerns, or questions, will be encouraged to refer the matter to the City Manager, or ask that the matter be placed on a future City Council meeting with the appropriate background information.

i. *Addressing the Council – Generally - Written Communications.* All persons may address the Council by written communication, including e-mail. Such written

communication pertaining to items subject to public hearing procedures will be made a part of the public record, but will not be read aloud.

Written comments may be submitted to the Council at any time by mailing or otherwise delivering to the City Clerk, 18415 – 101st Avenue NE, Bothell, WA 98011. The Clerk will distribute a copy of the correspondence to each Councilmember.

Oral Communications. All persons may address the Council verbally, either:

a) During the Visitor's portion of the Agenda for items not on the Agenda;
b) During public hearings, following staff (and applicant, if applicable) comments;
c) During items on the agenda that are not public hearings, etc., following staff comments at the discretion of the Council.

Addressing the Council -- Manner -- Limits. Each person addressing the Council will give his or her name in an audible tone of voice for the record, and, unless the Council grants further time, shall limit the address to three (3) minutes. No person other than the Council and the person having the floor will be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Mayor.

Addressing the Council-- Signs in meetings-- Limits. General public comment is invited and encouraged during the Visitor section of the Agenda only. All other comment is limited to specific items and issues as noted in the Agenda or otherwise allowed by Council with regard to specific items of business. During the Visitor portion of the meeting, the Mayor will invite citizens to speak to Council about topics that are not scheduled for public testimony. Comments on any non-agenda items will not be allowed other than during the Visitor section of the Agenda. Signs will be allowed in the meeting by the presiding officer so long as they are limited in size to 11 x 17 inches and are not displayed or otherwise employed in a manner that disturbs or threatens others as determined by the presiding officer. All signs, placards or other forms of public display type written comment must be composed of soft, collapsible materials with no protrusions or hard mountings. Any person bearing a sign or other form of public display type written comment that violates the provisions of this section will be required to remove such sign from the meeting chambers and may themselves be barred from the meeting if they become disruptive by refusing to remove such signs.

ii. . *Addressing the Council -- After a Motion is made*

After the Council makes a motion, no person will address the Council without first securing the permission of the Mayor or presiding officer to do so.

4. Consent Agenda

Those matters of business that require action by the Council which are considered to be of a routine and non-controversial nature are placed on the consent agenda. The individual items on the consent agenda shall be approved, adopted, or enacted by one motion of the Council. Examples of such items include:

- Approval of all Council minutes;
- Approval of vouchers;
- Final approval of leases and agreements;
- Final acceptance of grants, deeds, or easements;
- Setting dates for public hearings/meetings;

- Passage of resolutions and/or ordinances which the Council has given directions to place on the consent agenda;
- Final acceptance of public works construction projects.

*No discussion shall take place regarding any item on the consent agenda beyond asking questions for simple clarification.

5. Public Meetings, Public Hearings, Open Record Reviews, and Closed Record Reviews

Public meetings, public hearings, open record reviews, and closed record reviews shall be held at 6:00 p.m. or later, unless otherwise noticed in accordance with law.

Individuals desiring to speak during a public hearing are to address the Council from the speaker podium after giving their name and address. Comments are limited to the specific matter for which the public hearing is held and are limited to three (3) minutes, unless a longer period is permitted by the presiding officer and/or Council. No speaker may convey his or her time for speaking to another speaker. Written comments are encouraged during the public hearings. When materials are presented during public hearings, they should be submitted to the City Clerk before the public hearing is closed on the item.

In the event of single subject group comment, at the discretion of the presiding officer, single time allocation for a spokesperson greater than three (3) minutes can be allowed. Groups that qualify for this special treatment shall submit to the presiding officer, prior to comment, a list of present group constituents or others in agreement so that duplication will not occur.

After a public hearing is closed, no member of the public shall be permitted to address the Council or the staff. In fairness to members of the public, the City Council shall be considered to be in deliberations from that point forward. Continuance of the item shall place it on the "old business" portion of any forthcoming agenda. Additional public testimony either that evening or at a future meeting would be precluded until public hearing notification procedures required by the Bothell Municipal Code are concluded.

6. Ordinances & Resolutions

All ordinances and resolutions shall, before presentation to the Council, have been approved as to form and legality by the City Attorney, the applicable Department Head and the City Manager. No ordinance shall contain more than one subject that shall be fully and clearly expressed in its title.

7. Contracts/Agreements

All contract documents shall, before presentation to the Council, have been approved as to form and legality by the City Attorney and shall further have been presented to the City Manager or authorized representative for review.

8. Other Items: Includes Boards/Commissions updates and other update or discussion items that do not fit in the categories above
9. Council Conversations

During this item, Councilmembers have the opportunity to informally discuss topics of city interest.

10. Executive Session & Closed Session

At the call of the presiding officer, or with a majority vote, the City Council may recess to Executive Session to privately discuss and consider matters of confidential concern to the well-being of the City. The purposes for which an Executive Session or Closed Session may be held are identified in RCW 42.30.110 and RCW 42.30.140.

The City Council may also hold an Executive Session to receive confidential advice from the City Attorney under the attorney-client privilege.

Before convening in Executive Session or Closed Session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the Executive Session/Closed Session will be concluded. An Executive Session/Closed Session may be extended to a stated later time by announcement of the presiding officer.

11. Adjournment

Council meetings are scheduled to conclude no later than 9:00 PM but will continue until business is concluded with no motion necessary to extend. . In the event the Council cannot conclude the agenda at the current meeting, the meeting will be recessed to a definite time and place, and notice of such continued meeting will be given as provided by statute.

8.08 Study Sessions – Order of Business

The study session is the forum used by Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. Further, the purpose of Study Sessions is to allow Councilmembers to do concentrated preliminary work with administration on single subjects of time consuming, complex matters (i.e., budget, complex legislation or reports, etc.). One of the goals of Study Sessions is to allow a less formal atmosphere within which Councilmembers may ask questions of staff and each other, as opposed to taking time at regular meetings, thus shortening the time spent at Regular meetings. Study Sessions shall be in a less formal setting, but shall not discourage public observation.

All discussions and conclusions held during a study session are of an informal nature. No final action is taken while in a study session. Audience participation is allowed during the course of any study session.

Order of Business

1. Call to Order/Flag Salute
2. Meeting Agenda Approval
3. Visitor Comment
4. Study Session Items
5. Adjourn

8.09 General Procedures

A. Seating Arrangement of the Council

While the Deputy Mayor is customarily seated immediately next to the Mayor, he or she may choose to sit anywhere at the dais. The Mayor, with the approval of individual Councilmembers, shall establish other seating arrangements for regular council meetings.

B. Signing of City Documents

The Mayor, unless unavailable, shall sign all ordinances, resolutions, contracts and other documents which have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Deputy Mayor may sign such documents.

C. Quorum

Four members of the Council shall constitute a quorum and are necessary for the transaction of City business. In the absence of a quorum, the Mayor shall, at the request of any two members present, compel the attendance of absent members.

D. Minutes

The City Clerk or designee shall take minutes at all meetings of the City Council. The minutes shall be made available for public inspection.

E. How Many Votes are Required for Passage?

For all resolutions, and motions, a simple majority of the Councilmembers present (assuming a quorum) is sufficient for passage.

The passage of any ordinance, grant or revocation of a franchise or license, and any resolution for the payment of money, requires an affirmative vote of at least a majority of the whole membership of the Council.

Public emergency ordinances, necessary for the protection of public health, public safety, public property, or public peace, may take effect immediately upon final passage (instead of after a ~~five-day~~ 30 day delay), if passed by a majority plus one of the whole membership of the Council.

F. Electronic Voting

When seated at the dais for regular Council meetings, votes will be cast using the electronic voting system unless suspended as necessity or convenience of the Council dictates. In the event the electronic voting system is not working, votes will be taken by hand.

8.10 Open Public Meetings Act

A. Applicability

The open meeting law applies to the City Council, all quasi-judicial bodies, and all standing, special or advisory boards, commissions, committees or subcommittees of, or appointed by, the City Council.

B. Meetings

All meetings of the Council shall be open to the public, except in the special instances as provided in RCW 42.30.110 and RCW 42.30.140 as hereafter amended. A meeting takes place when a quorum (a majority of the total number of Councilmembers currently seated on the Council) is present and information concerning City business is received, discussed, and/or acted upon.

C. ADA Requirements

The City of Bothell strives to provide accessible meetings for people with disabilities. Assisted-listening devices are available for use in the Council Chambers. If these or other accommodations are required, please contact the Americans with Disabilities Act Coordinator at (425) 806-6201 at least three days prior to the meeting.

D. Actions

No legal action can be taken by the Council except in a public meeting. At a *Special Meeting,* action can be taken only on those items appearing on the posted agenda, except for emergency items as defined in Section 8.08(E). At a Regular Meeting of the City Council, the Council is free to take action on non-agenda items, subject to applicable notice requirements in state statutes or local ordinances for the subject matter being considered.

E. Correspondence

All writings distributed for discussion or consideration at a public meeting are public records. To that end, Councilmembers shall not communicate using text, twitter, Facebook or other social media during a council meeting. Councilmembers shall refrain from making or receiving personal, private phone calls or emails while at the Council dais. Councilmembers shall not communicate in any electronic format with another councilmember during a council meeting.

Written material protected by attorney-client privilege must not be cited or quoted.

Chapter 9
Protocol Administration

9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual as needed, or every two years.

9.02 Adherence to Protocol

A. Each Councilmember shall have the duty and obligation to review this Protocol Manual and be familiar with its provisions.

B. During City Council discussions, deliberations, and proceedings, the Mayor will be primarily responsible to ensure that the City Council, staff, and members of the public adhere to the Council's adopted Protocol Manual.

C. Knowing and/or willful failure to adhere to the provisions of this Protocol Manual may subject a Councilmember to enforcement and sanctions as follows:

(1) Upon determining that there is credible evidence that a Councilmember has, or may have, engaged in knowing and/or willful action or omission that constitutes failure to adhere to the provisions of this Protocol Manual, the Mayor or the Deputy Mayor, in the event that the Mayor is the Councilmember alleged to have engaged in such action or omission, may call upon the Council to determine whether such knowing and/or willful action or omission has occurred, and the sanctions, if any, to be imposed.

(2) Prior to conducting any hearing on an alleged failure to adhere to the provisions of this Protocol Manual, the Mayor or Deputy Mayor shall provide written notice to the Councilmember alleged to have engaged in such failure to adhere at least ten (10) calendar days prior to calling for such hearing. The written notice shall identify the specific provisions of this Protocol Manual with which the Councilmember is alleged to have failed to adhere and the facts supporting such allegation.

(3) Upon call by the Mayor or Deputy Mayor, a majority of a quorum of the Council shall vote on whether to hold a hearing to determine the existence of an act or omission constituting a failure to adhere and the sanctions, if any, to be imposed. If such hearing is approved by the Council, the hearing shall be held at a time and place specified in the motion approving such hearing.

(4) At such hearing, the Council shall determine whether there is a preponderance of credible and substantial evidence indicating that a Councilmember has knowingly and/or willfully acted or failed to act in a manner constituting a failure to adhere to the provisions of this Protocol Manual. The Councilmember alleged to have failed to adhere to the provisions of this Protocol Manual shall have the right to present evidence and testimony. The finding of the existence of such knowing and/or willful failure to adhere shall be determined by motion approved by a majority of the Council plus one.

(5) Upon finding that a knowing and/or willful failure to adhere to the provisions of this Protocol Manual has occurred, the Council shall proceed to determine whether the sanctions, if any, should be imposed. Appropriate sanctions may include, but are not limited to, the following:

(i) public censure
(ii) removal of appointment to extra-territorial boards, committees, or commissions; and
(iii) removal of appointment to Council boards or committees

9.03 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

9.04 Adherence to Non-interference Ordinance

The City Council delegates to the City Manager the responsibility to discuss with any Councilmember, on behalf of the full Council, any perceived or inappropriate interference or encroachment of administrative services. The City Manager will discuss with the Councilmember the action and suggest a more appropriate process or procedure to follow. After this discussion, if inappropriate action continues, the City Manager will report the concern to the full Council.

9.05 Applicability of Protocol Manual

The City Council Protocol Manual shall also apply when the Council is sitting as another entity or agency. The role of Mayor and Deputy Mayor shall be interchangeable with the Chair and Vice Chair, or President or Vice President, when sitting as another entity.

Chapter 10
Leaving Office

10.01 Return of Materials and Equipment

During their service on the City Council, members may have acquired or been provided with equipment such as computers or other items entailing a significant expense, as well as copies of the Bothell Municipal Code, *Imagine Bothell...,* Comprehensive Plan, mailbox key, etc. These items are to be returned to the City at the conclusion of a member's term.

10.02 Filling Council Vacancies

A. Purpose

The purpose of this section is to provide guidance to the City Council when a Bothell Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term.

B. References

RCW 42.30.110(H) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective office.

RCW 42.30.060 – Prohibition on Secret Ballots.

RCW 42.12 – Vacant Position.

RCW 35A.13.020 – Vacancies – Filling of Vacancies in Council/Manager Form of Government.

C. Appointment Process

(1) A Council position shall be officially declared vacant upon the occurrence of any of the causes of vacancy set forth in RCW 42.12.010, including resignation, recall, forfeiture, written intent to resign, or death of a Councilmember. The Councilmember who is vacating his or her position cannot participate in the appointment process.

(2) The City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule, so that the position is filled at the earliest opportunity.

(3) The City Clerk's Office shall prepare and submit a display advertisement to the City's official newspaper, with courtesy copies to all other local media outlets, which announces the vacancy consistent with the requirements necessary to hold public office: that the applicant (a) be a registered voter of the City of Bothell, and (b) have a one (1) year residency in the City of Bothell. This display advertisement shall be published once each week for two (2) consecutive weeks. This display advertisement shall contain other information, including but not limited to, time to be served in the vacant position, election information, salary information, Councilmember powers and duties, the deadline date and time for submitting applications, interview and appointment schedules, and such other information that the City Council deems appropriate.

(4) The City Clerk's Office shall prepare an application form which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Bothell offices and on the City's official website. Copies of the display advertisement will be provided to current members of the City of Bothell commissions, committees, task forces and other City-sponsored citizen groups.

(5) Applications received by the deadline date and time will be copied and circulated, by the City Clerk's Office, to the Mayor and City Council. Packets may also contain additional information received such as endorsements, letters of reference and other pertinent materials.

(6) The City Clerk's Office shall publish the required public notice(s) for the meeting scheduled for interviewing applicants for consideration to the vacant position. This meeting may be a regularly scheduled City Council meeting, or a special City Council meeting.

(7) The City Clerk's Office shall notify applicants of the location, date and time of City Council interviews.

(8) Prior to the date and time of the interview meeting, the Mayor shall accept one interview question from each Councilmember.

D. Interview Meeting

Each interview of an applicant/candidate shall be no more than 30 minutes in length as follows:

(1) The applicant shall present his or her credentials to the City Council. (5 minutes)

(2) The City Council shall ask the predetermined set of questions which must be responded to by the applicant. Each applicant will be asked and will answer the same set of questions, and will have 2 minutes to answer each question. (14 minutes)

(3) An informal question and answer period in which Councilmembers may ask and receive answers to miscellaneous questions. (10 minutes)

(4) The applicants' order of appearance will be determined by a random lot drawing performed by the City Clerk.

(5) The Council may reduce the 30-minute interview time if the number of applicants exceeds six (6) candidates, or alternatively, the Council may elect not to interview all of the applicants if the number exceeds six (6) candidates. The decision as to which applicants to interview will be based on the information contained in the application forms.

E. Voting

Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. However, all interviews, deliberations, nominations and votes taken by the Council shall be in open public session.

(1) The Mayor shall ask for nominations from the Councilmembers for the purpose of creating a group of candidates to consider. No second is needed.

(2) Nominations are closed by a motion, second and majority vote of the Council.

(3) Councilmembers may deliberate on such matters as criteria for selection and the nominated group of candidates.

(4) The Mayor shall poll Councilmembers to ascertain that Councilmembers are prepared to vote.

(5) The City Clerk shall proceed with a roll-call vote.

(6) Elections will continue until a nominee receives a majority vote of the remaining Councilmembers.

(7) At any time during the election process, the City Council may postpone elections until a date certain or regular meeting if a majority vote has not been received.

(8) Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.

(9) The Mayor shall declare the nominee receiving the majority vote as the new Councilmember and shall be sworn into office by the City Clerk at the earliest opportunity or no later than the next regularly scheduled City Council meeting.

(10) If the City Council does not appoint a qualified person to fill the vacancy within 90 days of the declared vacancy, the Revised Code of Washington delegates appointment powers to King County.

Chapter 11
Additional Training and Resource Materials

11.01 Association of Washington Cities [(800) 562-8981]

www.awcnet.org The Association is a voluntary, nonpartisan, nonprofit association comprised of all incorporated cities and towns in Washington.

11.02 National League of Cities [(202) 626-3000]

www.nlc.org A non-partisan organization serving municipal governments, the NLC works to establish unified policy positions, advocates those policies forcefully, and shares information that strengthens municipal government throughout the nation.

11.03 International City/County Management Association [(202) 289-4262]

www.imca.org ICMA is a professional and educational association of local government administrators that serves to enhance the quality of local government through professional management and to support and assist professional local government administration. The Association's *Elected Officials Handbook* series can be of great value to Councilmembers. Publications are also available through ICMA concerning every basic city service.

11.04 Government Finance Officers Association [(312) 977-9700]

www.gfoa.org GFOA is a professional association of state and local finance officers. The Association administers a broad range of services and programs related to government financial management:

11.05 Municipal Research & Services Center of Washington [(206) 625-1300]

www.mrsc.org MRSC is a nonprofit, independent organization created in 1969 to continue programs established in 1934 under the Bureau of Governmental Research at the University of Washington. One of the principal services of MRSC is to respond to inquiries on virtually every facet of local government.

11.06 Appendix

Reference materials are provided in the Appendix of this manual. Materials include:

- A. Glossary of Terms
- B. Parliamentary Procedure

11.06 A - Glossary of Terms

Adjourn: to end the meeting

Agenda: summarization of items scheduled to be heard and acted upon at a public meeting

Amend: to change a motion

Conflict of interest: exists when a Councilmember may have a personal interest in the outcome of a Council action. When a substantial conflict of interest exists, a City official must declare such and refrain from participating in or influencing the discussion or vote on the item

Consent agenda: a listing of non-controversial items presented to Council for their collective approval

Council packet: a compilation of Council Communications with reports and supporting documentation for items to be considered by Council

Debate: discussion about a motion

Decorum: behavior that is conducive to carrying on debate in a smooth and orderly manner. To maintain proper decorum and order, the following practices and customs are observed by members of the assembly: (1) confining remarks to the merits of the pending question; (2) refraining from attacking a member's motives; (3) addressing all remarks through the chair; (4) avoiding the use of members' names; (5) refraining from speaking adversely on a prior action not pending; (6) reading from reports, quotations, etc., only with permission; and, (7) refraining from disturbing the assembly

Emergency clause: a clause added to ordinances or resolutions declaring them to be of more than ordinary public need and necessity and putting them into effect immediately upon adoption. Ordinances and resolutions adopted without the emergency clause go into effect 30 days from the date of adoption.

Formal action: an act or direction of the City Council directing things to be done or recorded, but not requiring an ordinance or resolution

Germane: closely related to, or having bearing on, the subject

In order: relevant to the business at hand

Incidental motion: is a question of procedure that arises out of other motions. An incidental motion must be considered before the other motion. Incidental motions yield to privileged motions and to the motion to table. They are not debatable, except "appeal" and in this case, the presiding officer may submit to the assembly for a decision. Motions of this

classification include (listed in order of precedence): (1) point of order; (2) appeal the decision of the chair; (3) suspension of rules; and, (4) parliamentary inquiry

Main motion: introduces an item of business to the Council for its consideration. A main motion cannot be made when another motion is before the Council. A main motion yields to privileged, subsidiary and incidental motions

Majority: more than one-half of the members present

Miscellaneous motions: not conveniently classified as subsidiary, incidental, or privileged, but which are in common use. These include: (1) take from the table; (2) reconsider; and (3) rescind

Motion: a proposal that Council take a stand or take action on some issue

Municipal code: the codification of general ordinances adopted by Council.

Ordinance: an action that has the effect of making or amending or repealing substantive city law

Parliamentary procedure: a set of rules for conduct at meetings. It allows everyone to be heard and to make decisions without confusion

Point of order: to raise a question of order. Point of order is pronounced when a member thinks that the rules of the assembly are being violated, thereby calling upon the chair for a ruling and an enforcement of the regular rules

Privileged motions: concern special or important matters not related to pending business. Privileged motions are most urgent and are of highest importance. Such a motion takes precedence over any pending question. Privileged motions are not debatable. They must be concerned with the rights of the assembly as a whole and the rights of each member in relation to the assembly. Privileged motions include the following and are listed in order of precedence: 1) adjourn; (2) recess; (3) question of privilege

Protocol: a code prescribing strict adherence to correct etiquette and precedence

Quasi-judicial proceedings: those proceedings in which the City Council is required to make findings based on an evidentiary record. In quasi-judicial proceedings, the City Council sits as the judge and jury, and is required to make findings based on the evidence and records presented. Examples of quasi-judicial proceedings heard by the City Council include open record reviews, closed record reviews, and subdivision map approvals.

Quorum: the number of members that must be present for the meeting to be called to order and to conduct business legally. A quorum of the Bothell City Council consists of four members, when all seven Council seats are filled.

Resolution: a formal, permanent, or long-standing expression of intent or public policy of the City

Second: a verbal signal from a member that he or she wishes to consider a motion just made

Special meeting: an unscheduled public meeting of the City Council held to act on an item(s) requiring immediate consideration. Special meetings must be posted 24 hours prior to the time of the meeting in order to be held

Subsidiary motion: changes or affects how the main motion is handled. This motion is voted on before the main motion. Subsidiary motions yield to all privileged and incidental motions and subsidiary motions above it in order of rank: (1) lay on the table (postpone temporarily); (2) the previous question (close debate); (3) limit or extend limits of debate; (4) postpone definitely or to a time certain; (5) commit, refer, or recommit to committee; (6) amend (change or modify a motion); (7) postpone indefinitely (kill a motion)

Title: the lead-in paragraph of an ordinance or resolution declaring its purpose. The title appears on the meeting agenda

Voting: the means by which motions are accepted or rejected by the Council

11.06 B- Parliamentary Procedure

By approval of the Council Protocol Manual, the City Council has adopted a modified version of *Robert's Rules of Order*. The abridged rules of order that will be entertained by the Bothell City Council can be found in the Appendix.

Customs of Formality

The presentation and disposition of motions at a City Council meeting involves significant interaction between the presiding officer and the members of the Council. Therefore, members should understand the customs of formality that are followed by the presiding officer and members in conformance with parliamentary procedure.

A. Customs Observed by Members

The regular presiding officer of the Council is addressed as "Mayor_____" or Mr. (or Madam) Mayor." Even at meetings where no citizens are present, the presiding officer is called by the individual's proper title and is never addressed or referred to by his or her first name or the personal pronoun "you."

As a general rule, the presiding, officer is addressed as "the chair" when additional reference is required. For example, "Mr. Mayor, do I understand the chair to state..." The presiding officer's place or station in the chambers is also called "the chair." Therefore, the term "the chair" applies to both the presiding officer and to that person's station in the council chambers.

Members address only the chair, or address each other through the chair, and generally refer to each other by title. For example, "Mr. Mayor, may I ask Councilwoman A to explain..."

B. Customs Observed by the Presiding Officer

The presiding officer refers to himself or herself as the chair and never uses the personal pronoun "I." For example, "The chair rules that..." The presiding officer also does not address an individual member as "you," but refers to members by their proper title.

Meeting Decorum and Order

The presiding officer shall preserve decorum and decide all questions of order, subject to appeal by the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the chair or the rules of protocol.

Any Councilmember may request the presiding officer to enforce the rules of protocol. Upon motion and majority vote, the presiding officer shall be required to do so.

Order of Discussion

The presiding officer should follow the prepared agenda as much as possible. However, for those occasions when deviations are necessary or convenient, the presiding officer will clearly announce that the Council has decided to rearrange the agenda. When changing the order of discussion, it must be done so as not to prevent or deny any member of the public the opportunity to listen to the discussion of any agenda item.

Obtaining the Floor

A Councilmember shall address the presiding officer and gain recognition prior to making a motion or engaging in debate. The presiding officer will recognize Councilmembers by their last name, such as "Councilmember Jones." Councilmembers will address each other as Councilmember, followed by last name, such as "Councilmember Jones." Cross-exchange between Councilmembers and the public should be avoided. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the Council.

After a member has concluded comments and yielded the floor, if two or more members are trying to obtain the floor at the same time, the general rule is that the person who addresses the chair first is entitled to be recognized. When a motion is open to debate, however, there are three instances in which the presiding officer should assign the floor to a person who may not have been the first to address the chair. These are:

1. The Councilmember who made the motion currently under debate is entitled to be recognized in preference to other members if that individual is claiming the floor and has not already spoken on the question.
2. No member is entitled to the floor a second time in the meeting on the same motion as long as another member who has not spoken on the motion desires the floor.
3. In instances where the person to be recognized is not determined by (1) or (2) above, and where the presiding officer knows that members who are seeking the floor have opposite opinions on the motion, the chair should let the floor alternate as much as possible between those favoring and those opposing the motion.

Questions to Staff

A Councilmember may, after recognition by the presiding officer, address questions to staff members.

Interruptions

Once recognized, a Councilmember should not be interrupted while speaking, except to make a point of order or personal privilege. If a Councilmember is called to order while speaking, the individual shall cease speaking until the question order is determined.

Upon being recognized by the presiding officer, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the presiding officer.

Discussion Limit

A Councilmember should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak. Councilmembers are encouraged to discuss items during the decision-making process.

Basic Steps to Conducting Business

Specific requests or proposals that are presented to Council for consideration and possible action must be introduced in the form of a motion. For the proper presentation and disposition of most motions, 13 separate steps are required. The basic steps to conducting business include:

The Presiding Officer (chair):
1. Introduces the item to be considered as presented on the agenda
2. Opens a public hearing
3. Closes the public hearing after receiving comments (if any) from the public
4. Calls for discussion

A member of the Council:
5. Addresses the chair
6. Is recognized by the chair
7. Proposes the motion

A second member of the Council:
8. Seconds the motion

The Presiding Officer (chair):
9. States the motion
10. Calls for any further discussion or debate
11. Restates the motion and puts the motion to a vote

The City Clerk:
12. Takes the vote
13. Announces the results

Making a Motion

Under parliamentary procedure, there are three steps required to bring a motion before the Council for its consideration:

1. A Councilmember makes a motion;
2. Another Councilmember seconds the motion, and
3. The chair states the motion.

Unless the motion can interrupt a speaker as explained in *Robert's Rules of Order*, a member must obtain the floor to make a motion. Once the chair has recognized a Councilmember, the individual makes the motion by saying, "I move that..." or "I move to..." and announcing what is proposed.

Councilmembers should attempt as much as possible to state motions in the positive form---that is, "I move to..." rather than "I move not to..." Motions where one must vote "yes" to vote against a proposal are confusing not only for Councilmembers, but also for staff and citizens.

If a proposal has only minimal support, a Councilmember might state "I make this motion in order to put it on the floor for discussion. I am not sure of my position on it at the present time."

Seconding a Motion

After a motion has been made, and if it requires a second, another Councilmember who wishes to see the motion considered says, without obtaining the floor, "I second the motion," or simply, "Second." A second merely implies that the member agrees the motion should come before the meeting, not necessarily that the member favors it. If another member of the Council does not second the motion, the chair normally asks, "Is there a second to the motion?" If there is no second, the chair should say, "Since there is no second, the motion is not before this meeting." If seconded, the maker of the motion should then be regarded as having the refusal of the floor in preference to all other members.

The purpose of a second is to prevent time being spent on motions that only one person wants to discuss. After the Council makes a motion, no person shall address the Council without first securing the permission of the Mayor or Council to do so.

Stating the Question

Under parliamentary procedure, making and seconding a motion does not put it before the Council for consideration. This can be done only by the chair when the presiding officer repeats the exact motion and indicates that the motion is open for debate by stating: "It has been moved and seconded that ... Is there any discussion?"

A. Right to Withdraw or Modify a Motion
Until the chair has stated the question, the maker has the right to modify or withdraw the motion. After the motion has been stated, however, it can be withdrawn only with the Council's consent. If any objection is made, it will be necessary to obtain leave to withdraw by a motion for that purpose. When a motion is withdrawn, the effect is the same as if it had never been made.

B. Pending Motions
When the chair has stated a motion, it is said to be *pending*. When several motions are pending, the last one stated by the chair, and the first to be disposed of, is called the *immediately pending question*. Thereafter, other pending motions are considered in descending order of rank.

Amendment of the Main Motion

When the main motion does not exactly suit the members of the Council, it may be changed by means of amendment *before* it is finally voted upon. Once recognized by the chair, a Councilmember may make the motion to amend by stating, "I move to amend the motion by..." ---adding, striking out, inserting, or substituting. An amendment to the main motion requires a second; it is debatable, requires a majority vote, and must be germane---that is, closely related to or having bearing on the subject of the motion to be amended.

If the motion on the amendment passes, the chair puts the main motion, as amended, to a vote. If the motion on the amendment fails, the chair puts the main motion, as originally presented, to a vote.

The member, who offers the motion, until it has been stated by the chair, can modify the motion, or withdraw it entirely; after it is stated, he/she can do neither without the consent of the body (majority). For example, the mover may state, "With the consent of the body I will modify my motion to state as follows..." If no one objects, it shall be deemed that he/she has the consent of the body to modify his/her motion. When the mover modifies his/her motion, the one who seconds it can withdraw his/her second.

Postponement of Business

A. Postpone to a Time Certain
Council may delay action on a pending question by making a motion to postpone the item either indefinitely or to a time certain. This motion can be made regardless of how much debate has taken place. The question may be postponed either so that it may be considered at a more convenient time or because debate has shown reasons for delaying a decision.

B. Postpone Indefinitely

Council may decline to take a position on a pending question by moving to postpone the item indefinitely. Voting to postpone indefinitely kills the main motion and avoids a direct vote on the question. This motion is useful for disposing of a badly expressed main motion that cannot be either adopted or expressly rejected without possibly undesirable consequences.

C. Table

Commonly misused in place of a motion to postpone, Council may lay the pending question aside temporarily when some other issue of immediate urgency has arisen. *Lay on the Table* is out of order if the evident intent is to kill or avoid dealing with an item. This motion requires a majority vote and halts consideration of a question immediately and without debate. After a question has been laid on the table, it can be taken from the table by a majority vote as soon as the interrupting business is disposed of and when no other question is pending.

Debate

The term "debate" applies to the discussion of the merits of any pending question during a Council meeting. All main motions and certain other motions are entitled to debate.

Any member of the City Council may move to close debate by saying, "I move that debate on the motion be closed," or "I move the previous question." However, Councilmembers should refrain from using the term, "call the question," as a means to end debate. The audience better understands, "Move that debate on the motion be closed," rather than "calling the question." The motion must be seconded. The presiding officer immediately requests a vote, to which a two-thirds vote is required to close debate.

A motion to close debate can neither be debated nor amended. The motion to close debate effects the immediately pending question, whether it is an amendment or the main motion. Should the motion fail, debate is reopened. If the motion passes, then the Council shall vote on the motion for which debate was closed.

Debate shall not be closed until every Councilmember present has had at least one opportunity to speak on the motion.

While debate on a main motion is under way, amendments and subsidiary, privileged and incidental motions may be introduced (if they are in order), debated (if debatable) and disposed of.

In addition to the customs of formality discussed in Section 9.01, observance of the following practices will make debate smooth and orderly. Members of the Council should:

- Confine their comments to the merits of the pending question;
- Refrain from speaking against their own motions;
- Refrain from reading reports, quotations, etc., without permission of the Council; and

- Speakers should yield the floor to the chair whenever the chair interrupts to give a ruling or information, or to otherwise speak

Voting Procedures

Each Councilmember shall vote on all questions put to the City Council, unless a conflict of interest under State law or appearance of fairness question is present. Unless a member of the Council states that he or she is not voting, his or her silence shall be recorded as an affirmative vote.

If a member asserts a conflict of interest under State law or appearance of fairness question, and it is not apparent to all Councilmembers present, the member shall be excused from voting on an issue only by majority vote of the Councilmembers present.

If it is determined by majority vote of the City Council as a whole, plus one, that a Councilmember has a conflict of interest under State law or would violate the appearance of fairness doctrine by participating in, and/or voting on, a matter coming before the Council, then the member determined to have the conflict of interest or appearance of fairness doctrine violation shall not participate in or vote on said matter. In the event a challenged member or members requests additional time prior to the challenge having been voted on by the City Council in order for the Councilmember to present further information to the Council, then the City Council's determination with respect to the challenge shall be continued to the next regularly scheduled meeting of the City Council, at which time the member or members requesting the additional time shall present such additional information. At the conclusion of the presentation, the City Council shall make its determination as provided hereinabove.

When the debate appears to be over and if no one indicates a desire to continue discussion, the chair puts the motion to a vote by stating, "If there is no further discussion, cast your votes."

Only those ordinances, resolutions, or motions that receive an affirmative vote by the majority of the present and voting members of the City Council who also constitute a quorum shall be passed or become effective unless other voting requirements are provided by Washington State law in which case Washington State law shall prevail. In order for an ordinance or resolution to become effective immediately, the City Council must declare that an emergency exists and approve the ordinance or resolution by the affirmative vote of three-fourths of the members of the City Council. (See Section 8.10E)

A conflict of interest shall be declared whenever appropriate and in compliance with state law. The affected Councilmember will not participate in the discussion and will abstain from the voting process by leaving the Council Chambers until such time as consideration of the item has been concluded.

A. Affirmative Vote

Affirmative votes will be case in an audible tone of voice, except when seated at the dais for regular Council meetings, votes will be cast using the electronic voting board unless suspended as necessity or convenience of the Council dictates.

B. Abstention from Voting

Any member may abstain from voting on any question; provided, at the time of declaring his/her abstention, he/she shall state the reason.

C. Tie Vote

A tie vote results in the motion having failed. The presiding officer may publicly explain the effect of the tie vote for the audience.

D. Reconsideration

Reconsideration of an item will be considered by a majority vote of the Council. A member of the prevailing majority must make a motion for reconsideration when the previous vote was taken, and can be made no later than the next regular meeting after which the previous vote was taken.

Right of Protest

A Councilmember is never required to state reasons for a dissenting vote; provided, however, that any member of the City Council shall have the right to state the reasons for his or her dissent from, or protest against, any action of the Council. Such statement shall be noted in the minutes along with the record of the vote in the following format: "Councilmember XX verbally stated his/her reasons for voting in the minority on this matter." No other statement is proper or will be allowed to be recorded in the minutes of the meeting.

General Rules of Procedure

A. Standing to Question Procedures

These rules shall govern the parliamentary procedures of the members and by the members only. Procedures may be questioned only by members of the body, and then only in accordance with these rules. The decision of the chair will be final and conclusive as to all, subject only to a motion by a member of the body, duly and timely made, in which case the ruling of the body shall be final and conclusive. Nothing in these rules will be construed to prevent the chairman or a member from requesting aid in the interpretation of these rules or other matters from the City staff or officials.

B. Precedence

Motions having precedence on those that may be made while another motion is pending.

C. To Yield

Motions yield when they are pending and another matter can be considered while the yielding motion still pends.

D. Applied

Where a motion can have no subordinate motion applied to it, the fact is stated. For example, the motion to continue may not be applied to the motion to lay on the table.

E. Debate

Debate shall not take place until the chair has stated the question. Debate shall be limited to the immediately pending question, except that the main question is also open when the following motions are pending: postpone indefinitely, or reconsider a debatable question.

F. Putting the Question

When the debate appears to have closed, the chair will ask, "Are you ready for the question?" If no one asks for the floor, the chair shall put the question to a vote, making it clear what the question is.

G. Majority

A majority of those present shall constitute a majority of the body assuming a quorum is present. The chair has the tie-breaking vote and may second a motion.

Specific Rules of Procedure

The following motions are permissible in considering any matter on the agenda, and unless otherwise specified, shall rank in precedence and application as set forth below:

A. Undebatable Motions

1. Question of Order and Appeal.

A question of order takes precedence of the question giving rise to it, may be put when another member has the floor, needs no second, and must be decided by the chairman without debate. If a member objects he may appeal, which if seconded, will immediately be put to the body. An appeal is waived if not made immediately. On appeal, the decision of the chair is sustained on a tie vote.

2. Suspension of Rules.

This motion may not be amended, nor another motion be applied to it, nor a vote on it reconsidered. Rules of the body may not be suspended except for a definite and specific purpose and by a vote of one more than a majority present. Nothing else may be done under the suspension. It may not be renewed at the same meeting if once defeated. It shall be in order to change the order of the agenda. No rule can be suspended when the negative vote is as large as the minority protected by that rule.

3. To Lay on the Table

This motion may not be used for purposes of continuance of a matter that has been specially called for public hearing, which is done by a motion to continue. It may not be amended, nor an affirmative vote on it be reconsidered.

If carried, the subject tabled may not be considered again until the body votes to take it from the table, which motion is also undebatable.

The object of the motion is to postpone the subject in such a manner that it can be taken up at any time, either at the same or some future meeting. It may be used to suppress a question for that meeting, but not for a matter for which a public meeting has been specially set. The effect of the motion is to place on the table everything that adheres to the subject, so that if an amendment were ordered to lie on the table, the subject whom it is proposed to amend is also tabled. However, it may be limited to the particular pending matter and if so adopted the remaining matters shall still be before the body.

4. The Previous Question

This motion is not amendable and applies to any debatable question, but is not debatable itself. It requires the vote of one more than a majority of the members present for its adoption. When called and seconded, the chair shall immediately put the question. If the motion fails to carry by a majority plus one of the members present, the debate will continue as if the motion had not been made. If adopted, the chair shall immediately bring the body to vote upon the pending question.

If applied to an amendment to a pending question, it brings to a vote not only the motion to amend, but also the question to be amended. However, the motion for the previous question may be limited to the pending amendment and, if adopted, debate will be closed only to the motion to amend.

It shall be proper for a member to submit a motion and at the same time move the previous question thereon and thus cut off debate on the motion. In this case, the chair shall first put the motion for previous question to vote.

B. Debatable Motions

1. Continue to a Certain Day

This motion yields to all undebatable motions, and takes precedence of all other debatable motions, except that it may be amended by altering the time, and the previous question can be applied to it without affecting any other motions pending.

2. To Commit or Refer

This motion is to commit or refer a matter to a committee. It can be amended by altering the committee, or giving the committee instructions. The debate on the motion opens the debate on the main question it is proposed to commit.

3. To Amend

This motion takes precedence over nothing but the question that it is proposed to amend and yields to all questions except to postpone indefinitely. It can be applied to all but undebatable questions, an amendment of an amendment, to postpone indefinitely, or to reconsider. It can be amended itself, but an amendment of an amendment cannot be amended.

An amendment may be inconsistent with the one already adopted, or may be directly in conflict with the spirit of the original motion, but it must have a direct bearing upon the subject of that motion. A motion to amend by inserting new words once past may not be the subject matter of a new amendment to change the same words. The proper motion is the motion to reconsider the vote by which the words were inserted.

A motion to amend may be made to "divide the question" into two or more questions as the mover specifies, so as to get a separate vote on any particular point or points.

4. To Postpone Indefinitely

This motion takes precedence of nothing except the question to which it is applied and yields to all motions except to amend. It cannot be amended, and opens to debate the entire question which it is proposed to postpone.

Its effect is to entirely remove the question from the body for that session. The previous question, if ordered when this motion is pending, applies only to it without affecting the main question.

It cannot be applied to a matter that has been specifically set for public hearing. A negative vote on it cannot be reconsidered.

5. Principal Question
The main or principal question is a motion to bring before the body for its consideration any particular subject. No principal motion can be made when any other motion is before the body. It takes precedence over nothing and yields to all.

C. Miscellaneous Motions
1. To Rescind
This motion cannot be made for a matter that has been voted upon for which a matter has been specifically called for public hearing. However, for other matters to which it is appropriately addressed, as where it is too late to reconsider the vote, the motion is the course to pursue to rescind an objectionable policy, order or motion; it is debatable.

2. To Reconsider
This motion is not in order after the body has voted upon the principal question which is the subject matter of a specially called public hearing, unless made immediately after thereon and before the Council has moved to the next item of business. It is otherwise in order at any time, even when another member has the floor, but not after the Council has adjourned the meeting. Nothing herein shall be construed as preventing the council from considering the same item at a subsequent meeting as a new item of business.

A member who voted with the prevailing side must make the motion. It can be applied to the vote of every other question, except as noted above, and except to suspend the rules and an affirmative vote to lay on the table or to take from the table.

The motion may not be amended. Whether or not it is debatable depends upon whether the question to be reconsidered is debatable or undebatable. It may be laid on the table, in which case, the reconsider, like any other question, can be taken from the table.

3. Roll Call
Any member may demand a roll call vote any time before or after any question is put. The demand needs no second and the chair must ask for a roll call vote on demand. It is not debatable and may be applied to any question. It is waived if after the vote it is not immediately made and prior to the next matter being considered.

Suggested Forms

1. Undebatable Motions
a. <u>Question of order</u>
Member: "I raise a point of order."
Chair: "State your point of order."
Member: States his/her point of order
Chair: Ruling by the chair, which may give reasons.
Member: "I appeal from the decision of the chair."
Chair: (If seconded) "Shall the decision of the chair stand as the decision of the body?"

b. Suspension of rules (majority plus one)
Member: "I move to suspend the rules requiring..."

c. To lay on the table (majority plus one)
Member: "I move to lay the question (stating it) on the table."
Chair: (If seconded) "Shall the main question be now put?"
Member: "I call for the previous question on the amendment."
Chair: (If seconded) "Shall the question be now put on the amendment?"

2. Debatable Motions
a. Continue to a certain day (majority)
Member: "I move to continue the question of (stating it) to the next regular (or recessed) meeting of (date)." *NOTE: Confirm date of meeting with City Attorney in matters of land use to ensure compliance with the BMC.*

b. To commit or refer (majority)
Member: "I move to refer the subject to a committee."

c. To amend (majority)
Member: "I move to amend the motion to 'add', or 'insert', to 'strike', to 'strike out XYZ and insert ABC', to 'divide the question' (into two or more questions), etc."

d. To postpone indefinitely (majority)
Member: "I move to postpone the question indefinitely."

e. Principal question (majority)
Member: "I move that..."

3. Miscellaneous Motions

a. To rescind (majority)
Member: "I move to rescind that motion, policy, etc."

b. To reconsider (majority)
Member: "Having voted on the prevailing side, I move that we reconsider the vote on the motion to (stating it) and have such motion entered on the record."

c. Roll call (any member)
Member: "I demand a roll call vote." No second needed.
Chair: "The clerk will please call the roll."

Other Protocol

Councilmembers and staff shall:

- Work to preserve appropriate order and decorum during all meetings.
- Address Councilmembers as Councilmember, followed by last name, such as "Councilmember Jones," and staff by staff member's last name.
- Discourage side conversations, disruptions, interruptions or delaying efforts.
- Limit questions after motions and eliminate questions that are meant to merely support position.
- Focus on outcomes rather than the activities that create end result
- Inform the presiding officer when departing from a meeting.
- Limit disruptive behavior. The presiding officer will call persons demonstrating rude, boisterous, or profane behavior to order. If such conduct continues, the presiding officer may call a recess, request the removal of such person(s) from the Council Chambers, adjourn the meeting, or take such other appropriate action as permitted by the law. The City Council discourages applause, booing or other similar behaviors from the public during meetings.
- Recognize that only the City Council, staff, advisory body chairs or designated representatives, and those authorized by the presiding officer shall be permitted to sit at the Council or staff stations.

A. Enforcement of Order

The Chief of Police (or designee) acts as the sergeant-at-arms. It shall be the duty of the sergeant-at-arms to carry out all instructions of the presiding officer to preserve the peace and maintain order and decorum at Council meetings.

A portion or all of the public may be removed from the meeting site if willful disruption makes conducting the meeting unfeasible. Upon instructions of the Mayor, it shall be the duty of the sergeant-at-arms, or any of them present, to place any person who violates the order and decorum of the meeting under arrest, and cause him or her to be prosecuted in accordance with law.

B. Values of Respect

The City Council recognizes the importance of approaching the public's business in an environment of personal respect that places emphasis on the consideration of policy and avoids personalization of comments. Some general guidelines utilized by the City Council include:

- Discussion should focus on policy matters.
- Personal criticism of members is inappropriate.
- Proper decorum should be displayed as other members express their views.

Parliamentarian

The Mayor, or in the absence of the Mayor, the Deputy Mayor, shall serve as parliamentarian for the City Council and as such shall decide all questions of parliamentary procedure in accordance with the parliamentary rules contained in *Robert's Rules of Order*. Before deciding any question of parliamentary procedure, the Mayor may request advice from the City Attorney or City Clerk or designee. In cases where serious errors in procedure are being used or being contemplated, the City Attorney should give advice even when it has not been requested.

Reference Guide to Motions

Action		Interrupts action/speaker	Requires a second	Debatable	Amendable	Required vote	Can be reconsidered	Robert's Rules Section (9th Edition)
Main motion or question	16*	No	Yes	Yes	Yes	Majority	Yes	10
Move to adjourn	1*	No	Yes	No	No	Majority	No	21
Move to take a recess	1*	No	Yes	No	Yes	Majority	No	20
Question of privilege		Yes	No	No	No	No Vote	No	19
Move to lay the question on the table		No	Yes	No	No	Majority	No	17
Move to close debate		No	Yes	No	No	2/3	Yes	16
Move to limit debate	3*	No	Yes	No	Yes	2/3	Yes	15
Move to postpone	1*	No	Yes	Yes	Yes	Majority	Yes	14
Move to refer the matter	4*	No	Yes	Yes	Yes	Majority	Yes	13
Move to amend the motion	5*	No	Yes	10*	Yes	Majority	Yes	12
Move to postpone indefinitely		No	Yes	Yes	No	Majority	13*	11
Move to introduce business		No	Yes	Yes	Yes	Majority	Yes	10
The motions listed above are in order of precedence. Below there is no order.								
Point of order		Yes	No	No	No	15*	No	23
Appeal the decision of the chair		Yes	Yes	Yes	No	9*	Yes	24
Move to suspend the rules	2*	No	Yes	No	No	2/3	No	25
Parliamentary inquiry		12*	No	No	No	No Vote	No	32
Move to take from the table	6*	No	Yes	No	No	Majority	No	33
Move to reconsider	7*	12*	Yes	10*	No	Majority	No	36
Move to rescind	8*	No	Yes	Yes	Yes	11*	14*	34

1* To date and time. Not necessary with "Move to adjourn."
2* ". . . That interfere with_____." The motion must state its purpose or object
3* Specify what limitations: i.e., time, number of speeches, etc.
4* Specify to whom and for what reason
5* Specify amendment
6* During same meeting at which the item was tabled or ~~at the next meeting~~
7* Maker of motion must have been on prevailing side
8* Specify action to be rescinded
9* The question is, "Shall the decision of the chair stand?" A majority negative vote is necessary to overrule the decision
10* Only if the motion in question is itself debatable
11* Whatever vote was required to pass the motion in question
12* Can only interrupt speaker with speaker's permission, but does interrupt proceedings
13* Affirmative votes may be reconsidered
14* Negative votes may be reconsidered
15* No vote unless the chair submits to the assembly for a decision
16* For circumstances where a greater than majority vote is required for approval, see Section 8.10E of this manual
17* Ruling on question of privilege is made by chair

Board & Commission Matrix

Board/Commission	Residency Requirements	Special Requirements
Arts & Festivals Commission (BMC 2.45) **7 members/3-year terms** Meets 4th Thursday of each month, 7:00 PM City Hall – Conf. Rooms 107/108 Appointing Authority: City Council	A majority of the members shall be residents of the city. All members shall be residents of the City's urban growth area.	Initial terms of office shall be staggered 3 years, not more than three of which shall expire each year
Landmark Preservation Board (BMC 22.12) **7 members / 5-year terms** Meets 4th Tuesday of each month, 7:30 p.m., City Hall, Conf. Room 108 *Appointing Authority: City Council*	A majority of the board members shall be residents of the city. Members shall be residents of the city's urban growth area; provided, however, the required professional members of said board may reside outside the city or the urban growth area or city planning area.	At least two of the members must be professionals selected from among the disciplines of engineering, history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography or American studies; there are no residency requirements for the members with professional qualifications.
Library Board (BMC 2.36) **7 members / 5-year terms** Meets 2nd Thursday of every other month, 7:15 p.m., Bothell Library Meeting Room *Appointing Authority: City Council*	Members of the board need not be city residents. Members appointed or reappointed after August 12, 1991, shall be residents of the city's urban growth area, when adopted, and as thereafter amended or of the city's planning area until that time.	None
Lodging Tax Advisory Committee (BMC 2.34) **7 members / 2-year terms** Meets at least one time a year to review and make recommendations on the city spending plan. City Hall. *Appointing Authority: City Council*	No residency requirements, except for the City Council representative, who must be a resident of the City	(a) 3 members must be persons involved in activities for the enhancement of tourism in the Bothell community which are funded by lodging tax revenues received under Chapter 67.28 RCW (b) 3 members must be representatives of businesses authorized to collect lodging tax under Chapter 67.28 RCW (hotel, rooming house, tourist court, motel, or trailer camp)

Parks & Recreation Board (BMC 2.44) **7 members / 3-year terms** Meets 2nd Thursday of the month, 7:00 p.m., Bothell Municipal Courtroom *Appointing Authority: City Council*	A majority of the members shall be residents of the city. All members shall be residents of the city's urban growth area.	None
Planning Commission (BMC 2.52) **7 members / 4-year terms** Meets first 3 Wednesdays of the month, 7:00 p.m., City Hall Council Chambers *Appointing Authority: City Council*	Reside within City limits	None
Civil Service Commission (BMC 2.48) Meets as business demands – 3rd Wednesday 5:30 PM – City Hall Appointing Authority – City Manager	Reside within City limits	Citizen of the United States, resident of the city for a least one year and registered voter in King or Snohomish County
LEOFF 1 Board (BMC 2.88) Meets as business demands on 2nd Wednesday 6:30 PM – City Hall Conf. Room 127 Appointing Authority: LEOFF 1 Board	Reside within City limits	
Shorelines Board (BMC 13.19) 7 members/5-year terms Meets as business demands	Reside within City Limits	Familiarity with the shorelines of Bothell and the City's SMP.

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☐ No Action ☒ AB #: 19-215

Subject: Ordinance Regarding a Small Wireless Facility Franchise Agreement with SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Paul Byrne, City Attorney
Elana Zana, Attorney, Ogden Murphy Wallace

Policy Consideration and Connection to Council Goals:

This action furthers the Council's goal to raise the technology standards for citizen and local jurisdiction needs.

Background/ Discussion: In Washington, a telecommunications company or utility that wishes to locate its facilities within city rights-of-way generally obtains a franchise (similar to a master permit) from that city. The franchise sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. RCW 35A.47.040, contains state delegation of franchising authority to the City.
Currently, the City of Bothell has franchises with various telecommunications service providers, including a macro wireless franchise with SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS ("Verizon Wireless"), see Ordinance 2229. In this instance, Verizon Wireless is requesting a franchise to install, operate and maintain small wireless facilities in the City of Bothell's rights of way. These installations may only be installed consistent with the City's new code requirements for small wireless facilities in BMC Chapter 12.11.

This franchise does not permit Verizon Wireless to operate a broadcast cable system, macro wireless facilities or wireline facilities within the City's rights of way. Verizon Wireless is still required to apply for all appropriate permits prior to constructing its facilities within the rights of way and go through the applicable land use process.

Previous City Actions:

- November 19, 2019 – Council adopted code amendments to BMC Chapter 12.11 pertaining to wireless communication facilities and small wireless facilities.

Category: Consent

Attachments:

1. Proposed Ordinance Granting a Telecommunications Franchise to SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS

Recommended Action:

No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

City Manager Approval: _____ Date: 12/09/2019

ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, Seattle SMSA Limited Partnership d/b/a Verizon Wireless (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a wireless telecommunications network; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the Bothell Municipal Code requires persons who are seeking to operate and maintain wireless telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. Seattle SMSA Limited Partnership d/b/a Verizon Wireless is granted a non-exclusive franchise for the transmission of wireless telecommunications in, through, over, and under the rights-of-way of the City of Bothell, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law ("Effective Date").

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

Table of Contents

Page

Section 1. Franchise Granted. 3

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services. 3

Section 3. Non-Exclusive Franchise Grant 5

Section 4. Location of Telecommunications Network Facilities 6

Section 5. Relocation of Telecommunications Network Facilities. 6

Section 6. Undergrounding of Facilities 11

Section 7. Maps and Records 12

Section 8. Work in the Rights-of-Way 14

Section 9. One Call Locator Service 17

Section 10. Safety Requirements. 17

Section 11. Work of Contractors and Subcontractors 19

Section 12. Restoration after Construction 19

Section 13. Emergency Work/Dangerous Conditions 20

Section 14. Recovery of Costs, Taxes, and Fees 21

Section 15. Small Wireless Facilities. 23

Section 16. Indemnification. 29

Section 17. Insurance 32

Section 18. Abandonment of Franchisee's Telecommunications Network. 34

Section 19. Bonds 36

Section 20. Remedies to Enforce Compliance. 37

Section 21. Forfeiture and Revocation 38

Section 22. Non-Waiver 39

Section 23. City Ordinances and Regulations 39

Section 24. Cost of Publication 39
Section 25. Survival..... 40
Section 26. Assignment..... 40
Section 27. Extension..... 41
Section 28. Entire Agreement 42
Section 29. Eminent Domain..... 42
Section 30. Vacation 42
Section 31. Notice 42
Section 32. Severability..... 43
Section 33. Compliance with All Applicable Laws. 43
Section 34. Amendment..... 44
Section 35. Attorney Fees 44
Section 36. Hazardous Substances 44
Section 37. Licenses, Fees, and Taxes..... 45
Section 38. Miscellaneous..... 45
Section 39. Acceptance..... 46

This Franchise is entered into in Bothell, Washington, by and between the City of Bothell, a Washington municipal corporation (hereinafter "the City"), and Seattle SMSA Limited Partnership d/b/a Verizon Wireless (the "Franchisee"). The City and Franchisee are sometimes referred to hereinafter collectively as the "parties."

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days' written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Wireless Facilities, as defined in Section 2.2, for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Bothell Zoning Code, the Comprehensive Plan, the Design and Construction Standards, and the Bothell Municipal Code (collectively, the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: Small Wireless network consisting of a collection of interrelated Small Wireless Facilities designed to deliver all services authorized by federal or state law, including personal wireless services, telecommunications services, and commercial mobile data services, as those terms are defined by federal law (the "Services").

Section 2.2 As used herein, "Small Wireless Facilities" or "Facilities" means a small wireless facility as defined in 47 CFR § 1.6002. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from "Small Wireless Facilities." Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e., macro facilities).

Section 2.3 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

Section 2.4 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.5 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the

City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Bothell Design and Construction Standards and applicable Code requirements in effect at the time of the specific Facility application. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 *Relocation Requirement*. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity; provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

Section 5.2 *Relocation – Third-Party Structures*. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

Section 5.3 *Relocation – Franchisee-Owned Structures.* The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 5.4 *Locate*. Upon request of the City or of a third-party performing work in the Right-of-Way and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.5 *Notice and Relocation Process*. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the

City's overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.

Section 5.6 *Alternative Arrangements*. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 *Contractor Delay Claims*. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, as defined in Section 38.8 below, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 *Indemnification*. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.9 *City's Costs.* If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.10 *Survival*. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Wireless Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

Section 6.2 Franchisee shall not be required to underground any portion of the Facility that must for technological reasons remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of

the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Wireless Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or

federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.5 Nothing in Section 7.3 or Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 8.5 Franchisee shall comply with all notice requirements of intended construction that the applicable permit may require that Franchisee provide to entities or persons adjacent to the affected area, and such notice shall contain the information required under the permit, which may include the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to

trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the

City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 *Additional standards include*:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10.4 *Stop Work Order*. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee by overnight delivery;

(d) Indicate the nature of the alleged violation or unsafe condition; and

(e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Design and Construction Standards. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may

determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee 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 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise

pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized

so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 5.08 of the Bothell Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Chapter 5.08 of the Bothell Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Chapter 5.08 of the Bothell Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Bothell Municipal Code as may be permitted by law.

Section 15. Small Wireless Facilities.

Section 15.1 *City Retains Approval Authority*. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state, or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

Section 15.2 *City Approvals and Permits*. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

Section 15.3 *Preference for Existing Infrastructure; Site Specific Agreements*.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment, and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if the City prefers new

poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(c) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(d) This Section 15.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of wireless facilities.

Section 15.4 *Concealment*. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 *Eligible Facilities Requests*. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. The designs as illustrated in a Small Wireless Permit, including the dimensions and number of antennas and equipment boxes and the pole height are

intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

Section 15.6 *Inventory*. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance and shall provide the City an updated copy of the inventory report within thirty (30) days of a request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation, and photographs taken before and after the installation of the Small Wireless Facility and taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 *Unauthorized Facilities*. Any Small Wireless Facilities installations in the Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Penalty"). The Unauthorized Facility Penalty shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized

Facility Penalty shall be suspended upon the submission of a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Penalty will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchise an invoice detailing the total amount of the Unauthorized Facility Penalty, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Penalty pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Wireless Facilities but such Small Wireless Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

Section 15.8 *Graffiti Abatement*. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure or on the Small Wireless Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

Section 15.9 *Emissions Reports.*

(a) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable law.

(b) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities, which the City may request no more than once per year, unless as otherwise required by a permit due to a modification of the Facility. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling 1-800-264-6620 and also by written notice pursuant to Section 31. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 14.3 and Section 14.4.

Section 15.10 *Interference with Public Facilities*. Franchisee's Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR § 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure) or with emergency communications operation or equipment. If the Small Wireless Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by the City consistent with Section 13. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more

immediate action consistent with Section 13 to protect the public health, safety, and welfare.

Section 15.11 *Interference with Other Facilities*. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 16. Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, 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 Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 16 and

any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of $5,000,000 combined single limit each accident for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in the aggregate

(d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(e) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall be at least as broad as its primary coverage.

Section 17.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as an additional insureds as their interest may appear under this Agreement, with regard to activities performed by or on behalf of Franchisee, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 17. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the

City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 The City may review all insurance limits once every three (3) years during the Term, and upon prior written notice to and review by Franchise, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement.

Section 17.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Telecommunications Network.

Section 18.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.6. Deactivated Facilities, or

portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

Section 18.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

Section 18.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.4 Notwithstanding Section 18.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.5 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or

removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19. Bonds. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.1. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

Section 19.2 *Maintenance Bond*. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the

time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 19.3 *Franchise Bond*. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars ($50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20. Remedies to Enforce Compliance.

Section 20.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with

the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 20.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchise Bond set forth in Section 19.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 21. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Bothell City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Bothell City Council, on the basis of the record, will make the

determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 23. **City Ordinances and Regulations**. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 24. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 25. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 25, Section 27, and Section 38.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 26. Assignment.

Section 26.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 26.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 26.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 28. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 29. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 31. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3)

days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF BOTHELL
Public Works Director
18305 101st Ave. N.E.
Bothell, WA 98011

Franchisee:
Seattle SMSA Limited Partnership d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a Copy to:
Seattle SMSA Limited Partnership d/b/a dba Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

Section 32. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court ruling.

Section 33. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address Small Wireless

deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and

representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 38. Miscellaneous.

Section 38.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 38.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington or King County Superior Court.

Section 38.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 38.6 This Franchise may be enforced at both law and equity.

Section 38.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 38.8 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 39. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the Franchisee before a Notary Public. Acceptance must be filed with the City within thirty

(30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 17; any Performance Bond, if applicable, pursuant to Section 19.1; and the Franchise Bond required pursuant to Section 19.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

_____
ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

On the _____ day of _____, 2019, the City Council of the City of Bothell passed Ordinance No. _____(2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

EXHIBIT A

STATEMENT OF ACCEPTANCE

Seattle SMSA Limited Partnership d/b/a Verizon Wireless, for itself and its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS

By: Cellco Partnership, its General Partner

By: _____ Date: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 201_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

_____
Signature

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

MY COMMISSION EXPIRES: _____

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☐ No Action ☒ AB #: 19-216

Subject: Consider Adoption of Ordinance Regarding a Small Wireless Facility Franchise Agreement with New Cingular Wireless, aka AT&T

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Paul Byrne, City Attorney
Elana Zana, Attorney, Ogden Murphy Wallace

Policy Consideration and Connection to Council Goals:

This action furthers the Council's goal to raise the technology standards for citizen and local jurisdiction needs.

Background/ Discussion: In Washington, a telecommunications company or utility that wishes to locate its facilities within city rights-of-way generally obtains a franchise (similar to a master permit) from that city. The franchise sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. RCW 35A.47.040, contains state delegation of franchising authority to the City. Currently, the City of Bothell has franchises with various telecommunications service providers. In this instance, New Cingular Wireless, aka AT&T is requesting a franchise to install, operate and maintain small wireless facilities in the City of Bothell's rights of way. These installations may only be installed consistent with the City's new code requirements for small wireless facilities in BMC Chapter 12.11.

This franchise does not permit AT&T to operate a broadcast cable system, macro wireless facilities or wireline facilities within the City's rights of way. AT&T is still required to apply for all appropriate permits prior to constructing its facilities within the rights of way and go through the applicable land use process.

Previous City Actions:

- November 19, 2019 – Council adopted code amendments to BMC Chapter 12.11 pertaining to wireless communication facilities and small wireless facilities.

Category: Consent

Attachments:

1. Proposed Ordinance Granting a Telecommunications Franchise to NEW CINGULAR WIRELESS PCS, LLC

Recommended Action:

No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

City Manager Approval: _____ Date: 12/09/2019

ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO NEW CINGULAR WIRELESS PCS, LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, NEW CINGULAR WIRELESS PCS, LLC (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a wireless telecommunications network; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the Bothell Municipal Code requires persons who are seeking to operate and maintain wireless telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. NEW CINGULAR WIRELESS PCS, LLC is granted a non-exclusive franchise for the transmission of wireless telecommunications in, through, over, and under the rights-of-way of the City of Bothell, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law ("Effective Date").

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

Table of Contents

Page

Section 1 . Franchise Granted. 3

Section 2 . Authority Limited to Occupation of Public Rights-of-Way for Services. 3

Section 3 . Non-Exclusive Franchise Grant 5

Section 4 . Location of Telecommunications Network Facilities 6

Section 5 . Relocation of Telecommunications Network Facilities. 6

Section 6 . Undergrounding of Facilities 11

Section 7 . Maps and Records 12

Section 8 . Work in the Rights-of-Way 14

Section 9 . One Call Locator Service 17

Section 10 . Safety Requirements. 17

Section 11 . Work of Contractors and Subcontractors 19

Section 12 . Restoration after Construction 19

Section 13 . Emergency Work/Dangerous Conditions. 20

Section 14 . Recovery of Costs, Taxes, and Fees 21

Section 15 . Small Wireless Facilities. 23

Section 16 . Indemnification. 29

Section 17 . Insurance. 32

Section 18 . Abandonment of Franchisee's Telecommunications Network. 34

Section 19 . Bonds 36

Section 20 . Remedies to Enforce Compliance. 37

Section 21 . Forfeiture and Revocation 38

Section 22 . Non-Waiver 39

Section 23 . City Ordinances and Regulations 39

Section 24 . Cost of Publication 39
Section 25 . Survival 39
Section 26 . Assignment. 40
Section 27 . Extension 41
Section 28 . Entire Agreement 42
Section 29 . Eminent Domain 42
Section 30 . Vacation 42
Section 31 . Notice 42
Section 32 . Severability. 43
Section 33 . Compliance with All Applicable Laws. 43
Section 34 . Amendment. 44
Section 35 . Attorney Fees 44
Section 36 . Hazardous Substances 44
Section 37 . Licenses, Fees, and Taxes 45
Section 38 . Miscellaneous. 45
Section 39 . Acceptance 46

This Franchise is entered into in Bothell, Washington, by and between the City of Bothell, a Washington municipal corporation (hereinafter "the City"), and NEW CINGULAR WIRELESS PCS, LLC (the "Franchisee"). The City and Franchisee are sometimes referred to hereinafter collectively as the "parties."

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years, beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days' written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Wireless Facilities, as defined in Section 2.2, for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Bothell Zoning Code, the Comprehensive Plan, the Design and Construction Standards, and the Bothell Municipal Code (collectively, the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: Small Wireless network consisting of a collection of interrelated Small Wireless Facilities designed to deliver all services authorized by federal or state law, including personal wireless services, telecommunications services, and commercial mobile data services, as those terms are defined by federal law (the "Services").

Section 2.2 As used herein, "Small Wireless Facilities" or "Facilities" means a small wireless facility as defined in 47 CFR § 1.6002. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from "Small Wireless Facilities." Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e., macro facilities).

Section 2.3 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

Section 2.4 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.5 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the

City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Bothell Design and Construction Standards and applicable Code requirements in effect at the time of the specific Facility application. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 *Relocation Requirement*. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity; provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

Section 5.2 *Relocation – Third-Party Structures*. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

Section 5.3 *Relocation – Franchisee-Owned Structures.* The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 5.4 *Locate*. Upon request of the City or of a third-party performing work in the Right-of-Way and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.5 *Notice and Relocation Process*. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the

City's overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.

Section 5.6 *Alternative Arrangements*. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 *Contractor Delay Claims*. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, as defined in Section 38.8 below, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 *Indemnification*. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.9 *City's Costs.* If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.10 *Survival*. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Wireless Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

Section 6.2 Franchisee shall not be required to underground any portion of the Facility that must for technological reasons remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of

the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Wireless Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or

federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.5 Nothing in Section 7.3 or Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 8.5 If required by a permit, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above

ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such

condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 *Additional standards include*:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10.4 *Stop Work Order*. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee by overnight delivery;

(d) Indicate the nature of the alleged violation or unsafe condition; and

(e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Design and Construction Standards. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost

and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee 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 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Franchisee shall further be subject to

all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may

also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 5.08 of the Bothell Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Chapter 5.08 of the Bothell Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Chapter 5.08 of the Bothell Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Bothell Municipal Code as may be permitted by law.

Section 15. Small Wireless Facilities.

Section 15.1 *City Retains Approval Authority*. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or

regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state, or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

Section 15.2 *City Approvals and Permits*. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

Section 15.3 *Preference for Existing Infrastructure; Site Specific Agreements*.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment, and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may

request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(c) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(d) This Section 15.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of wireless facilities.

Section 15.4 *Concealment*. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 *Eligible Facilities Requests*. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. The designs as illustrated in a Small Wireless Permit, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a

proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

Section 15.6 *Inventory*. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance and shall provide the City an updated copy of the inventory report within thirty (30) days of a request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation, and photographs taken before and after the installation of the Small Wireless Facility and taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 *Unauthorized Facilities*. Any Small Wireless Facilities installations in the Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Penalty"). The Unauthorized Facility Penalty shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Penalty shall be suspended upon the submission of a complete application to the

City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Penalty will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchisee an invoice detailing the total amount of the Unauthorized Facility Penalty, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Penalty pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Wireless Facilities but such Small Wireless Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

Section 15.8 *Graffiti Abatement*. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure or on the Small Wireless Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

Section 15.9 *Emissions Reports.*

(a) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable law.

(b) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities, which shall occur no more than once per year unless as otherwise required by a permit due to a modification of the Facility. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling 1-800-832-6662 and also by written notice pursuant to Section 31. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 14.3 and Section 14.4.

Section 15.10 *Interference with Public Facilities*. Franchisee's Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR § 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure) or with emergency communications operation or equipment. If the Small Wireless Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by the City consistent with Section 13. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more

immediate action consistent with Section 13 to protect the public health, safety, and welfare.

Section 15.11 *Interference with Other Facilities*. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 16. Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, 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 Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 16 and

any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance.

Section 17.1 Franchisee shall carry and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee, except for the Excess Umbrella coverage described in subsection (d) below. Franchisee shall carry insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and required additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of $5,000,000 combined single limit per accident for bodily injury and property damage.

(b) Commercial General Liability insurance as per ISO form CG 00 01 or its equivalent, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, contractual liability; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(d) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella excess liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

Section 17.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, employees and agents ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11. In addition, the required insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City a certificate of insurance and a blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 17 that is not replaced. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to obtain replacement insurance meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below.

Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 The City may review all insurance limits once every three (3) calendar years during the Term may make reasonable adjustments in the limits upon sixty (60) days' prior written notice to Franchisee. Franchisee shall then provide an updated certificate of insurance to the City showing compliance with these adjustments and shall furnish a blanket additional insurance endorsement.

Section 17.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) make available a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Telecommunications Network.

Section 18.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.6. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

Section 18.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

Section 18.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.4 Notwithstanding Section 18.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.5 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such

Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19. Bonds. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.1. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

Section 19.2 *Maintenance Bond*. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final

cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 19.3 *Franchise Bond*. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars ($50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20. Remedies to Enforce Compliance.

Section 20.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 20.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchise Bond set forth in Section 19.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 21. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Bothell City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Bothell City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City

Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 23. **City Ordinances and Regulations**. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 24. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 25. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 25, Section 27, and Section 38.2 of this Franchise shall be in addition to any and all other obligations and

liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 26. Assignment.

Section 26.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 26.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or

(iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 26.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 28. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 29. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 31. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF BOTHELL
Public Works Director
18305 101st Ave. N.E.
Bothell, WA 98011

Franchisee:
NEW CINGULAR WIRELESS PCS, LLC
Attn:
New Cingular Wireless PCS, LLC

Attn: Tower Asset Group – Lease Administration
Re: Wireless Installation on Public Structures
(City of Bothell) (WA)
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

With a Copy to:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept. - Network Operations
Re: Wireless Installation on Public Structures
(City of Bothell) (WA)
208 S. Akard Street
Dallas, TX 75202-4206

Section 32. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court ruling.

Section 33. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the

approval of this Franchise, the City may modify its Codes to address Small Wireless deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend,

indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 38. Miscellaneous.

Section 38.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 38.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington or King County Superior Court.

Section 38.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 38.6 This Franchise may be enforced at both law and equity.

Section 38.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 38.8Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 39. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the

Franchisee before a Notary Public. Acceptance must be filed with the City within thirty (30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 17; any Performance Bond, if applicable, pursuant to Section 19.1; and the Franchise Bond required pursuant to Section 19.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

_____
ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

On the _____ day of _____, 2019, the City Council of the City of Bothell passed Ordinance No. _____(2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO NEW CINGULAR WIRELESS PCS, LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

EXHIBIT A

STATEMENT OF ACCEPTANCE

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

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____ Date: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 201_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

_____
Signature

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

MY COMMISSION EXPIRES: _____

Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: December 17, 2019 Action ☒ Study Session ☐ AB #: 19-217

Subject: Resolution Establishing Stay Out of Drug Areas, Repealing One Prohibited Area, And Renewing Existing Prohibited Areas.

Budget Impact/Source of Funds: None.

Staff Presenter/Department: Paul Byrne, City Attorney. Legal Department.

Executive Summary:

Chapter 9.04 BMC concerns "Stay Out of Drug Areas" (SODA) and associated procedures for ordering criminal offenders to avoid designated prohibited areas.

BMC 9.04.050 requires that court-issued Stay-Out-of-Drug-Area (SODA) orders set forth Prohibited Areas that have been established by City Council resolution at least every two years. Currently, BMC 9.04.060 codifies six specific geographic areas as SODA prohibited areas. The proposed resolution will establish one new prohibited area and repeal one existing prohibited area consistent with the procedures of BMC 9.04.050.

The six SODA zones are (1) the SR 527 & Maltby Road SODA (Fred Meyer), (2) the SR 527 & 220th St SE SODA (McDonalds' & Extended Stay Deluxe), (3) the 923 228th St SE SODA (QFC, Comfort Inn, & Holiday Inn), (4) the 228th St SE and SR 527 SODA (Extended Stay), (5) the 3850 Monte Villa SODA (Bothell Inn & Suites), and (6) the proposed E. 18333 120th Ave NE SODA (Home Depot). The SODA zone being repealed is the East Norway Hill Park.

The proposed resolution enumerates and renews all prohibited areas for the time period from January 1, 2020 through January 1, 2022. The proposed resolution is based on police experiences and crime data and contains recommendations for the geographic areas to be delineated for SODA designation.

Category: Consent

History:

- Ordinance No. 2218, adopted on February 2, 2017, established chapter 9.04 BMC and the SODA procedures.
- Ordinance No. 2226, adopted October 3, 2017, established three new SODA zones, repealed a portion of the code regarding SODA prohibited areas, expanded the definition of drug-related activity, and authorized the court to issue a SODA order where chemical dependency, substance abuse, or drug-related activity contributed to the offense of conviction.

Recommended Action:

Adopt the attached Resolution establishing and renewing prohibited areas related to areas of drug activity and repealing one SODA zone.

Attachments:

1. Proposed Resolution with attached maps
2. Affidavit of Officer Martin signed 4/28/2019
3. Affidavit of Officer Kunkel signed 5/10/2019
4. Affidavit of Officer Martin signed 6/28/2019.

City Manager Approval: _____ Date:12/9/2019

RESOLUTION NO. _____(2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON ESTABLISHING PROHIBITED AREAS RELATED TO MARKETPLACES OF DRUG-RELATED ACTIVITY.

WHEREAS, On February 2, 2017, the City Council enacted Ordinance No. 2218 related to Stay Out of Drug Areas (SODA), which has been codified as Chapter 9.04 of the Bothell Municipal Code; and

WHEREAS, BMC 9.04.050 requires that court-issued SODA orders set forth Prohibited Areas that have been established by a resolution of the City Council at a minimum of every two years; and

WHEREAS, Ordinance No. 2218 requires that the establishment of the Prohibited Areas be supported by information from the Police Department in the form of one or more declarations and/or sworn testimony; and

WHEREAS, in conjunction with the adoption of Ordinance No. 2218 in February of 2017, the Bothell Police Department provided information to the Council supporting the need for two prohibited areas in Bothell, and the City Council reviewed the declarations of Officer Erik Martin and Officer Issac Parker and/or heard other sworn testimony; and

WHEREAS, those two prohibited areas were adopted in Ordinance No. 2218 and codified at BMC 9.04.060; and

WHEREAS, the Bothell Police Department has now provided additional information to the City Council supporting the need for the addition of one new prohibited area in Bothell; and

WHEREAS, the Bothell Police Department has now provided additional information to the City Council supporting the elimination of drug-related crime in the E. Norway Hill Park SODA and rendering it unnecessary.

WHEREAS, the City Council has reviewed the declarations of Officer Erik Martin, Officer Shawn Kunkel, and Loss Prevention Officer Ryan Leggott and/or has heard other sworn testimony.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Based on the recommendations of Officer Martin, Officer Kunkel, and Loss Prevention Officer Ryan Leggott the areas listed herein are established as the Stay Out of Drug Areas (SODA) prohibited areas effective January 1, 2020, to January 1, 2022.

Unless otherwise specified, all areas within or adjacent to the specified boundaries are included in the adjacent prohibited zone.

(1) **SR 527 & Maltby Road SODA (Fred Meyer).** The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting at the northwestern corner of the intersection of State Route (SR) 527 (also referred to as the Bothell-Everett Hwy.) and SR 524 (also referred to as Maltby Road or 208th St. SE), proceeding south to the point on the western side of the right-of-way of SR 527 directly across from the southern corner of the Private Road on Snohomish County Assessor Parcel Number 27052900205000 (21221 Bothell-Everett Hwy.) where it intersects with SR 527;

b. From that point, proceeding east across SR 527 and continuing east along the southern boundary of the Private Road, which is the southern property line of Parcel Nos. 27052900205000, 27052900204900 (21225 Bothell-Everett Hwy.), 2705290020390, and 27052900204000, to the southeastern corner of Parcel No. 27052900204000, which is the southeastern corner of the intersection of the Private Road and 20th Ave SE;

c. From that point, proceeding north and northeast along the eastern boundary of the right-of-way of 20th Ave SE until 20th Ave SE dead-ends;

d. Then continuing around the barriers creating the dead-end of 20th Ave SE; then along the easterly edge of the paved impervious surface of Parcel Nos. 27052900204200, 27052900201500 (21215 Bothell-Everett Hwy.), 27052900200600, and 27052000302100 (21105 Bothell-Everett Hwy.); continuing east and then north along the property lines of Parcel Nos. 27052000301100 (20911 Bothell-Everett Hwy.) and 27052000303800 (2020 Maltby Road); and then continuing north across SR 524 to a point at the northern side of the right-of-way of SR 524 directly across from the northeastern corner of Parcel No. 27052000303800;

e. From that point, proceeding west along the northern side of the SR 524 right-of-way to the northwestern corner of the intersection of SR 527 and SR 524.

This includes the entirety of Snohomish County Assessor Parcel Numbers 27052000301500, 27052000303700, 27052000303800, 27052000301600, 27052000303500, 27052000301100, 27052000302100, 27052000301200, 27052900200600, 27052900201500, 27052900203900, 27052900204000, 27052900204100, 27052900204200, 27052900204300, 27052900204400,

27052900204900, and 27052900205000. The map attached as Exhibit B depicts these boundaries.

(2) **SR 527 & 220th ST SE SODA (McDonald's & Extended Stay Deluxe).** The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting at the northwestern corner of the intersection of SR 527 and 220th St. SE, proceeding east to the northeastern corner of the intersection of 220th St. SE and 17th Ave. SE;

b. From that point, proceeding south along the western boundary of the right-of-way of 17th Ave. SE to a point directly across from the southeastern corner of Snohomish County Assessor Parcel No. 27053000401800 (22122 17th Ave. SE);

c. From that point, proceeding west from that point across 17th Ave SE and continuing along the southern property line of Parcel No. 27053000401800, and then continuing from the southwestern corner of the parcel northwest directly across SR 527 to a point at the western edge of the right-of-way of SR 527;

d. From that point, proceeding northeast along the western boundary of the right-of-way of SR 527 to the northwest corner of the intersection of SR 527 and 220th St. SE.

This includes the entirety of Snohomish County Assessor Parcel Numbers 27053000402100, 270530000402200, 27053000401700, and 27053000401800. The map attached as Exhibit C depicts these boundaries.

(3) **923 228th St. SE. SODA (QFC, Comfort Inn, & Holiday Inn)**. The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting at the northwestern corner of Parcel No. 2705300300400, proceeding south along the western property lines of Parcel Nos. 2705300300400 and 27053000300500 until the southwestern corner of Parcel No. 27053000300500 meets 228th St. SE;

b. From that point, proceeding east along the property line as it abuts the northern sidewalk of the 228th St. SE right-of-way until the point where the impervious surface begins of the Private Road, which is a continuation of 10th Ave. SE;

c. From that point, proceeding north and northeast along the westerly boundary of the Private Road, following the curves in the roadway until reaching the northeastern corner of Parcel No. 2705300300400;

d. From that point, proceeding west along the northern property line, which runs near the edge of the parking lot and tree line, until the northwestern corner of Parcel No. 2705300300400.

This includes the entirety of Snohomish County Assessor Parcel Numbers 27053000300400 and 27053000300500. The map attached as Exhibit D depicts these boundaries.

(4) **228th St. SE & SR 527 SODA (Extended Stay)**. The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting at the southwestern corner of the intersection of 228th St. SE and 15th Ave. SE, proceeding 840' along the southern edge of 228th St. SE to the southwestern corner of the intersection of SR 527 and 228th St. SE;

b. From that point, proceeding 750' south-southwest along the eastern sidewalk of the SR 527 right-of-way;

c. From that point, 1250' east along the southern property lines of Parcel Nos. 00519300200100, 00519300100103, and 00519300100101 (all three parcels encompass the site address 22833 Bothell-Everett Hwy.) to the southwestern corner of Parcel No. 00519300100101, where it meets 15th Ave. SE;

d. From that point, proceeding 600' north along the eastern property lines of Parcel Nos. 00519300100101, 00519300100104 (22922 15th Ave. SE), 00519300100105 (1414 228th St. SE), and 00519300100106 (1410 228th St. SE) to the southwestern corner of the intersection of 228th St. SE and 15th Ave. SE.

This includes the entirety of Snohomish County Assessor Parcel Numbers 00519300100101, 00519300100102, 00519300100103, 00519300100104, 00519300100105, 00519300100106, 00519300200100, and 00519300200101. The map attached as Exhibit E depicts these boundaries.

(5) **3850 Monte Villa SODA (Bothell Inn & Suites)**. The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting from the southwestern corner of the intersection of 39th Ave. SE and Monte Villa Pkwy., proceeding west along the southern sidewalk of the Monte Villa Pkwy. right-of-way to a point 250' west at the northwestern corner of the property line of Parcel No. 00813300000900;

b. From that point, near the western portion of the driveway cut-down on Monte Villa Pkwy., proceeding south along the western edge of the property line of the parcel to a point 350' south at the southeastern corner of the property line of Parcel No. 00813300000900;

c. From that point, proceeding east 280' to 39th Ave. SE at the southeastern corner of Parcel No. 00813300001000 (3850 Monte Villa Pkwy.);

d. From that point, extending north along property line abutting the western sidewalk of 39th Ave. SE for 350' to the southwestern corner of the intersection of 39th Ave. SE and Monte Villa Pkwy.

This includes the entirety of Snohomish County Assessor Parcel Numbers 00813300001000 and 00813300000900. The map attached as Exhibit F depicts these boundaries.

(6) **E. 18333 120th Ave. NE SODA (Home Depot).** The entire area including, but not limited to, both sides of the full width of streets, all real property, both private and public, alleys, sidewalks, common areas, planting strips, parks, railroad tracks, marinas, trails, beaches, and parking areas within the following borders:

a. Starting at the northeast corner intersection of 120th Ave. NE and the entrance to 18333 120th Ave. NE's parking lot and extending southeast along the raised curb of 120th Ave. NE, which runs parallel to the property line of Parcel No. 0926059139, to the southeast entrance;

b. From that point, proceeding approximately 340' southwest following the fenced southern perimeter of the parking lot until the fence separating the wooded area from the paved area ends and the fire-lane begins;

c. From that point, proceeding approximately 800' northwest along the raised curbed edge of the parking lot until the raised curb of the fire-lane curves to the northeast;

d. From that point, proceeding approximately 720' northeast along the raised curbed perimeter of the fire-lane until it intersects with the edge of Parcel No. 0926059139, which abuts 120th Ave. NE, at the northeast entrance to 18333 120 Ave. NE.

This includes a portion of King County Assessor Parcel Number 0926059139. The maps attached as Exhibit F depict these boundaries.

Section 3. The maps attached as Exhibits B-F may be used to notify individuals of the boundaries of the SODA prohibited areas.

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

Section 5. This resolution shall take effect on January 1, 2020.

PASSED this _____ day of _____, 2019.

APPROVED:

_____
ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: _____(2019)

SR 527 & Maltby Road SODA (Fred Meyer)

City of Bothell

SR 527 & 220th ST SE SODA (McDonald's & Extended Stay Deluxe)

City of Bothell

923 228th St SE SODA (QFC, Comfort Inn, & Holiday Inn)

City of Bothell

228th St SE & SR 527 SODA (Extended Stay)

City of Bothell

3850 Monte Villa SODA (Bothell Inn & Suites)

City of Bothell

18333 120th Ave. NE SODA (Home Depot)

City of Bothell

Stay Out of Drug Areas

Declaration of Officer Erik Martin

April 28, 2019

I, Erik Martin, certify or declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. Attached and incorporated herewith by this reference is Exhibit A, which includes a description and map of this area
2. In the past 3 years there has been a measurable increase in drug related incidents at the Home Depot, 18333 120th Ave NE. In the past 16 months, there have been more than 65 reported cases of theft; 3 robberies where thefts were accomplished by force or fear as the suspect attempted to flee; and multiple warrant arrests in the parking lot. Every theft case that resulted in an arrest, involved a suspect that was exhibiting symptoms of being under the influence of a narcotic. Additionally, there have been multiple burglaries where the suspect committing the thefts had been previously trespassed from Home Depot.
3. There have been multiple instances of people in the parking lot who were experiencing drug overdoses that required medical attention. Immediate medical care trumped any criminal investigation but would have likely resulted in higher statistics should the medical event not have existed.
4. One recent theft investigation revealed a conspiracy of suspects who were targeting the Home Depot with a total loss of more than $8,000
5. Hypodermic needles and other drug paraphernalia have been located in the parking lot on numerous occasions.
6. Additional crimes such as identity theft and attempts to use counterfeit money to accomplish purchases at Home Depot are common place. Again, the suspect in these crimes, when caught, all exhibit signs and symptoms of narcotics use.
7. The Bothell Police Department continues to experience calls for service related to narcotics activity and thefts, and continues to investigate, proactively, similar events in these areas. I believe this location should be declared a SODA zone. This area is surrounded by commercial zones on the west and north sides, retail and high density residential areas on the east side, and recreational health facilities and doctor's offices on the south side. Additionally, there are jogging trails and recreational sports facilities on the north side that are frequented by children and families. The quality of life for the patrons of these establishments and business owners alike is impacted by the presence of these narcotics related crimes.

Signed this 28th day of April, at Bothell, WA.

0327

Officer Erik Martin #0327
Bothell Police Department

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Stay Out of Drug Areas

Declaration of Officer Shawn Kunkel

May 10, 2019

I, Shawn Kunkel, certify or declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

In recent years, the property located at 18333 120TH AVE NE (Home Depot) has shown a noticeable increase in drug related activity. Nearly every person contacted at this location during the last two years for investigation of Theft, Robbery, ID Theft, Trespassing, or other suspicious circumstances, has been found to be in possession of illegal drugs, drug paraphernalia, or has exhibited signs of recent drug use.

It is not uncommon for Bothell Police to respond to calls of someone overdosing in the parking lot at Home Depot. Additionally, hypodermic needles and other forms of drug paraphernalia are commonly found in the parking lot by members of the Home Depot staff and law enforcement alike.

Since 12-13-18, I have personally investigated or assisted with nine incidents at 18333 120th AVE NE, in the City of Bothell, Washington (Home Depot). Each of these incidents generated police reports. Most, if not all, of these incidents involve or are motivated by illegal narcotics. This belief is based on the following incidents:

- 18-27421- On 12-13-18, I responded to a report of a Theft in progress at 18333 120th AVE NE (Home Depot). Upon arrival, I located a subject matching the description of the suspect acting in a suspicious manner. He was later stopped on a traffic stop. This subject was found to have several warrants for his arrest for Organized Retail Theft, Theft 3RD Degree, and Possession of Drug Paraphernalia. Upon his arrest, he was found to be in possession of drug paraphernalia (tooter and foil). He later stated that he had swallowed over half of an ounce of Heroin when officers stopped him.

Coming up to the holidays, I researched the history of crime at this location and saw that between 11-1-18 and 12-20-18, there had been sixteen Thefts, and five other incidents involving suspicious circumstances or trespass. With this information, I setup an unmanned patrol car in front of the business from 12-21-18 to 12-23-18. I strategically placed the vehicle so that anyone approaching the business would see the patrol car, and deter them from engaging in illegal activity. There was no criminal activity reported during this time, or again, until 12-26-18 (Theft).

- 18-28188- On 12-26-18, I responded to a report of Theft in progress at 18333 120th AVE NE (Home Depot). Upon arrival, Officer Parker and I conducted a high risk stop on the suspect vehicle. The two occupants were taken into custody on the Theft. Stolen merchandise was located inside the vehicle and returned to Home Depot. One of the suspects was found to be in possession of a credit card which did not belong to him.

Though this specific credit card was not confirmed to be stolen, I recognized this to be consistent with ID Theft. I later learned that both subjects were involved in ID Theft and VUCSA activity.

- 19-3176- On 2-12-19, I responded to a report of Theft which occurred at 18333 120th AVE NE (Home Depot). Upon arrival, I contacted Loss Prevention who handed me five individual files. Each file represented a recent incident of Theft from this location committed by two subjects who were identified by Loss Prevention. These two subjects were known by Loss Prevention for stealing from numerous Home Depot stores throughout Snohomish and King Counties, resulting in countless thousands of dollars in stolen property. During my investigation, there were two more incidents of Theft involving these same two subjects from the Bothell location. This brought the total in Bothell to seven incidents with nearly $8,000 in stolen merchandise. Immediately following the seventh incident, both subjects were arrested by Bothell Officers. They told Officers that they were exchanging the stolen property for drugs. Both subjects were in possession of drug paraphernalia (foil, tooter pipes, and unidentified pills) at the time of their arrest. One subject was in possession of a dangerous weapon (brass knuckles).

- 19-4793- On 3-6-19, I responded to a report of Theft in progress at 18333 120th AVE NE (Home Depot). Upon arrival, I located a subject matching the suspect description running through the parking lot armed with a machete. I engaged in a foot pursuit with this subject through the wooded area with my service firearm unholstered. This subject ultimately surrendered and was taken into custody. This subject was in possession of .6 grams of crystal-like substance suspected to be Methamphetamine. This investigation was taken over by Officer Jacobsen.

- 19-5392- On 3-15-19, I responded to a report of Theft in progress at 18333 120th AVE NE (Home Depot). Loss Prevention called to report a subject inside the store with receipts, likely about to commit a fraudulent return. This subject was known to commit fraudulent returns at other Home Depot locations. Upon arrival, Officer Lobe contacted the subject in question before he did the return. I recognized this subject from previous contacts as a known illegal narcotics user. This subject was trespassed from Home Depot, but was not taken into custody.

- 19-5833- On 3-21-19, I responded to a report of Theft in progress at 18333 120th AVE NE (Home Depot). Loss Prevention called to report an unknown subject attempting to leave the store with a cart full of unpaid items. While trying to flee, the subject pushed Loss Prevention and fled on foot. Upon arrival, Officers located a subject matching the suspect description a few blocks away. This subject ultimately surrendered and I placed him under arrest. This subject was in possession of drug paraphernalia (tooter and a hypodermic needle). This investigation was taken over by Officer Saponara.

- 19-5834- On 3-21-19 (while dealing with incident #19-5833), I responded to another report of Theft in progress at 18333 120th AVE NE (Home Depot). Loss Prevention called to report a male subject inside the store removing security devices and concealing items on his person. As the subject attempted to flee, I engaged in a foot pursuit with the subject. As I took the subject to the ground, the subject then engaged in a fight with me. This subject was rendered unconscious and ultimately taken into custody. He was in possession of drug paraphernalia (foil with burned residue) and a small amount of Methamphetamine (.5g).

- 19-8454- On 4-28-19, I responded to assist Officer Caban on a report of drug activities at 18333 120th AVE NE (Home Depot). Officer Caban advised over the radio that two subjects were consuming illegal narcotics inside their vehicle and just fled from him. There were tools inside the vehicle as well that were suspected stolen from Home Depot. Officers attempted to conduct a traffic stop on this vehicle, but the vehicle evaded officers. As this was not a valid reason to engage in vehicular pursuit per policy, officers disengaged.

I believe that we need to continue to be proactive in our efforts to combat this current drug epidemic which impacts us all. Because of my recent experiences listed above, I feel that the residents of the City of Bothell would be safer with the area surrounding Home Depot (18333 120th AVE NE) designated as a SODA Zone.

Signed this 10th day of May, at Bothell, WA.

#0209

Officer Shawn Kunkel
Bothell Police Department

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Stay Out of Drug Areas Renewals

Declaration of Officer Erik Martin

June 28, 2019

Your affiant, Erik Martin, is a Bothell Police Officer and has been so employed for 8 years. I have worked in patrol, traffic, and training during those aforementioned 8 years. Prior to my employment by Bothell Police, I worked for 12 years as a Police Officer in San Jose, California. During my time in San Jose, I worked in gangs, prostitution, narcotics, patrol, and child pornography; including approximately 6 years undercover in special operations for narcotics, prostitution and child pornography.

Since 2017, the City of Bothell created 6 Stay Out of Drug Areas (SODA zones). The locations of the SODA zones were determined based on crime rates for drug activity in those areas. The creation of the SODA zones has resulted in hundreds of people being arrested for drug related crimes in those area. People arrested for drug related crimes in other locations throughout the city have also received orders to stay away from those areas.

There is a direct correlation between the creation of the SODA zones and a reduction of crime in the city. While the number of self-initiated police contacts within the SODA zones have risen, the number of calls to 911 for drug crimes has dropped. In fact, the rate of residential burglaries has dropped by 50% from previous years. This reduction is a true success for the City of Bothell and provides a great service to the residents.

As previously stated, there are 6 SODA zones in the city. They are:

1. 21000 Blk of SR527, commonly known as Fred Meyers.
2. 22000 Blk of 17th Ave SE, commonly known as McDonalds and The Extended Stay Deluxe.
3. 22800 Blk of 15th Ave SE, commonly known as QFC, Comfort Inn, and Holiday Inn.
4. 900 Blk of 228th St SE, commonly known as Extended Stay
5. 3800 Blk of Monte Villa, commonly known as Bothell Inn and Suites.
6. 15100 Blk of 124th Ave NE, commonly known as East Norway Hill Park.

Except East Norway Hill Park, the SODA zones are still a common meeting area for narcotic transactions, drug crimes, and a place where people addicted to narcotics gather. The frequency of these occurrences has been reduced dramatically but it is critical that the SODA zones be renewed before they expire.

Regarding the East Norway Hill Park zone, the criminal activity has seemingly disappeared. Only 2 years ago, several thousand used needles were located within the park and cleaned up during a massive enforcement process. An internment survey of the area over the past few weeks has revealed no illegal activity.

Your affiant, formally requests the aforementioned 5 SODA zones be renewed.

Signed,

0327

Erik Martin #0327
Bothell Police Traffic Unit
Bothell Police Officers Guild Vice President

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Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-218

Subject: 2020 Addendum and Fourth Amendment to City Manager Employment Contract

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Andy Rheaume, Mayor

Executive Summary:

Ms. Phillips began serving as Bothell City Manager on January 17, 2017. City Council conducted Ms. Phillips' 2017 performance evaluation on January 16, 2018 and completed her third performance evaluation on March 5, 2019. City Council evaluated Ms. Phillips' 2018 and 2019 performance with the assistance of an outside, third-party facilitator.

The result of the evaluation was that Ms. Phillips exceeded Council's expectations. Pursuant to her employment agreement, Ms. Phillips is entitled to performance pay equal to 5% of her base salary. The 2020 addendum memorializes her eligibility for a 2020 salary increase and the contribution of performance pay to her deferred compensation retirement plan.

The fourth amendment affirms the parties' intent that performance pay will be contributed to Ms. Phillips' deferred compensation retirement plan and shall not result in an increase to her base salary.

Category: Consent

History:

- November 26, 2016: Council approved an employment contract with Ms. Phillips.
- June 13, 2017: Council approved a first amendment to the employment contract.
- January 16, 2018: Council held an executive session to conduct Ms. Phillips' 2017 performance evaluation, memorialized by the February 13, 2018 addendum and second amendment.
- March 5, 2019: Council held an executive session to conduct Ms. Phillips' 2018 performance evaluation.
- December 3 and December 12: Council held executive sessions to conduct Ms. Phillips' performance evaluation.

Recommended Action:

Authorize the Mayor to sign the 2020 Addendum and Fourth Amendment to the Employment Contract with City Manager Phillips.

Attachments:

1. Proposed 2020 Addendum and Fourth Amended Employment Contract with Jennifer Phillips

City Manager Approval: _____ as to form Date: 12/10/2019

2020 ADDENDUM AND FOURTH AMENDMENT TO CITY MANAGER'S EMPLOYMENT CONTRACT

The 2209 Addendum and Fourth Amendment to City Manger's Employment Contract ("Contract") is dated as of December 17, 2019, between the City of Bothell, a Washington municipal corporation ("City"), and Jennifer Phillips ("Manager").

1) Recitals

A) The City and Manager are parties to the Contract approved by the City Council on November 29, 2016, and signed on December 6, 2016. Manager has served as City Manager since January 17, 2017. The Contract was first amended on June 13, 2017. The Contract was amended a second time on February 13, 2018.The Contract was amended a third time on March 19, 2019.

B) The Contract anticipates that salary increases will be memorialized through an addendum and that certain authorizations will be approved in writing. In addition, the City and Manager desire to amend again the Contract, as set forth below.

2) Agreement

Now, therefore, the parties agree as stated herein.

A) 2020 Addendum – Pursuant to Section 4.1.1, Manager's base salary is increased annually by the same percentage increase provided to other non-represented employees. Manager's current base salary is $208,584. Additionally, pursuant to Section 4.1.3, because Manager exceeded City's performance expectations, performance pay equal to 5% of Manager's base salary shall be contributed to Manager's 457(b) retirement account.

B) In the 2018 Addendum, pursuant to Section 6.7, regarding professional enhancement costs, the City Council authorized Manager's participation in a one-week education course at Harvard Kennedy School Executive Education. The City Council authorized this professional enhancement course in order to support Manager's continued professional development and to enable Manager to satisfy the required 40 hours of training to maintain her designation as an ICMA Credentialed City Manager. Manager was unable to avail herself for this education in 2018 or 2019. Thus, said authorization remains valid for 2020.

C) The parties further agree to amend the employment contract as follows:

i) Section 4.1.3 is replaced with the following paragraph:

<u>Performance Pay</u>. Annually, Manager may be entitled to additional compensation based on the City Council's evaluation of her performance. In the event that Manager achieves a performance review that exceeds expectations, Manager shall receive additional compensation equal to 5.0% of Manager's base salary, which compensation will be contributed to Manager's

457(b) retirement plan as of January 1, 2020. If the contribution to the plan exceeds the contribution limit for the 457(b) plan, the remaining plan contribution shall be made to a 401(a) plan.

D) All other terms and conditions of the Agreement, dated December 6, 2016, the First Amended Agreement, dated June 13, 2017, and the Second Amended Agreement, dated February 13, 2018, and the Third Amended Agreement, dated March 19, 2019 shall remain the same.

E) This Amendment is effective on January 1, 2020.

Dated and signed this 17th day of December, 2019.

City of Bothell	**City Manager**
_____	_____
Andy Rheaume, Mayor	**Jennifer Phillips, City Manager**

Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-219

Subject: Continuation of Public Hearing and Action on 2019 Plan and Code amendments (Capital Facilities Element and establishing Minimum Density and intensity within the Canyon Park and North Creek / NE 195 ST Activity Centers)

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Bruce Blackburn, Community Development

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Policy Consideration and Connection to Council Goals:

There are two policy considerations:

- Whether to amend the Capital Facilities Element to reflect voter approved bonds to rebuild fire stations 42 and 45.

  This action supports the Council Goal of public safety; and

- Whether to establish minimum residential densities and non-residential floor area ratios within the Canyon Park and North Creek/NE 195 ST Subarea activity centers. 0 to 0.40.

  This action supports the Council goal of economic development.

Background:
These amendments are being proposed within the annual comprehensive plan amendment cycle allowed by the Growth Management Act and are required to be adopted by the end of the year. Any amendments not adopted this year could be considered in the 2020 annual amendment cycle which would delay implementation for at least one year.

The public hearing was continued from December 3 due to an appeal of the SEPA determination by the Canyon Park Business Center Owners Association (CPBCOA). Staff has been in discussion with the CPBCOA to address concerns raised through the appeal.

<u>Capital Facilities Element</u>
In November 2018, voters approved bonds to rebuild fire station 42 (Canyon Park) and 45 (Downtown), including safety upgrades, technical modernization and energy efficiency to accommodate current and future growth. This action amends the Capital Facilities Element of the Comprehensive Plan to reflect the Council-adopted Capital Facilities Plan. Under the Growth Management Act (GMA) regulations these documents must align.

<u>Minimum Density and Intensity</u>

The City of Bothell established activity centers, identified by the R-AC zone, in 2002 (Ordinance 1876) as a means of focusing growth toward locations where transportation, utilities, transit, services, and employment were capable of accommodating higher levels of growth.

Activity Centers are an important component to meeting the City's assigned growth targets and accommodate 20% of the City's projected population growth. Historically, R-AC developments have achieved 50 to 80 dwelling units per acre (DU/AC). Recently, applicants have been proposing townhome developments within the Canyon Park and North Creek / NE 195 ST Subareas that achieve less than 20 dwelling units per acre; a density measurably lower than the growth the City planned for these areas.

Previous City Actions:

- June 2002: Council adopts the Residential-Activity Center Zone
- March 2019: Council approves 2019 Planning Docket, including Capital Facilities Element amendments to reflect the Public Safety Bond, and the Canyon Park Subarea Plan Update
- June 2019: Council initiates Minimum density and Intensity Plan and Code amendments within Activity Centers
- November 2019: Planning Commission holds public hearing and forwards recommendation for approval to Council

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Discussion:

CPBCOA has agreed to withdraw the SEPA appeal based on four proposed remedies. Staff can support the reduction of the floor area ratio from 0.50 to 0.40 at this time. Staff has informed the CPBCOA that the minimum may be increased to 0.50 or some other level based on the additional analysis done as part of the Canyon Park subarea plan. The CPBCOA has also requested a letter of intent from the City committing to specific actions by the CPBCOA and the City leading to the City assuming ownership of internal streets; that would ultimately be a decision for Council. The CPBCOA has also requested additional transportation analysis of the roadway network and assumptions for that analysis. Finally, the CPBCOA requested that the Council not grant an exemption from the minimum floor area ratio to Sound Transit as part of this amendment. The last request is consistent with the staff recommendation. However, the details of the letter of intent and the scope of work require additional refinement that may or may not be resolved in time for the December 17 Council meeting. Staff will have an update and a recommendation for Council action at the December 17 meeting.

<u>Capital Facilities Element</u>

This Plan amendment requires no changes to the Capital Facilities Element goals or policies. The Planning Commission recommendation is limited to updating the descriptions and staffing levels of the rebuilt fire stations and contains no policy amendments.

<u>Minimum Development Levels</u>

The City is heavily reliant on the R-AC zone to accommodate a substantial amount of the City's 2035 population growth target. For example, the 2012 King County Buildable Lands Report

assumes the R-AC zone will provide between 50 to 80 dwelling units per acre and goes on to estimate a capacity of 3,286 dwelling units (+6,210 residents) within the 55 vacant or re-developable R-AC parcels. This is equal to 60 dwelling units per acre. The lower densities being developed in this zone will be reflected in the upcoming 2020 buildable lands analysis resulting in a reduction in the city's ability to accommodate projected growth. A significant reduction may require the City to accommodate growth elsewhere in the community.

The proposed amendments are timely because recent residential and non-residential developments within the Canyon Park and North Creek / NE 195 ST activity centers propose densities and development intensities substantially below planned capacities. Additionally for Canyon Park, the number of activity units (i.e. jobs and residents) being realized are below the minimums established by the Puget Sound Regional Council's (PSRC) Regional Growth Center (RGC) Framework Criteria.

One of the purposes of the R-AC zone was to avoid the need to increase population growth within the City's established residential neighborhoods consistent with Comprehensive Plan Policy LU-P6, which states: "Preserve the character of established neighborhoods and protect such neighborhoods from intrusion by incompatible uses."

The R-AC is described in Land Use Element Policy LU-P4 as:

> "This designation shall provide for multi-family residential development in designated activity centers, and is intended to promote a variety of housing types in sufficient numbers to support a range of shopping, dining and entertainment opportunities within those centers. *No specific density is prescribed*: the number of units which may be constructed on an individual property or within the center shall be controlled by site and building regulations concerning height, parking, landscaping, setbacks and other aspects of development." (*Emphasis added*)

The Planning Commission Recommendation proposes these amendments be limited to the Canyon Park and North Creek / NE 195 ST activity centers because those subareas have been receiving the majority of the development inquiries and applications and because, compared to the other activity centers, there is significant growth capacity remaining in these subareas.

The Planning Commission Recommendation proposes the implementation of a floor area ratio (FAR) standard to establish minimum non-residential intensities (essentially constructing capacity for future employees). FARs are used throughout the Puget Sound region and establish that the building floor area be a percentage of the parcel of land area upon which the building is located. For example, if a minimum FAR of0.5 were applied to a parcel of 10,000 square feet in area, the square footage of the building would be required to be at least 5,000 square feet.

The Planning Commission is recommending the following (Attachment 2):

1. Apply the minimum density and intensity provisions to the Canyon Park and North Creek / NE 195 ST activity areas.
2. Establish a minimum density of 35 dwelling units per acre for exclusively residential developments.
3. Establish a minimum FAR of 0.40 for exclusively non-residential developments.
4. Establish three approaches for mixed-use developments within Canyon Park:

a. Apply the minimum residential density plus provide 40% of the average story floor area for structured parking and 10% of the average floor area for externally oriented retail, office and other service uses. This is an existing requirement that is applied to portions of the Canyon Park Activity Center and is invoked whenever the building exceeds 35 feet in height; or
b. Apply a minimum FAR of 1.0 and the allocation of space to residential or non-residential would be at the discretion of the developer/owner; or
c. Provide discretion to mixed use development applicants to achieve either the minimum residential density or the minimum non-residential floor area ratio and then 'fill-in' the balance of the development with a reduced density or FARs.

5. Establish two approaches for mixed use development within North Creek /NE 195 ST:
   a. Apply a minimum FAR of 1.0; or
   b. Provide discretion to mixed use development applicants to achieve either the minimum residential density or the minimum non-residential floor area ratio and then 'fill-in' the balance of the development with a reduced density or FARs.

These standards are also contained in the following table:

Subarea	**Minimum residential density DU/acre**	**Minimum FAR for non-residential**	**Minimums Mixed Use Option 1**	**Minimums Mixed Use Option 2**	**Minimums Mixed use Option 3**
Canyon Park	35	0.40	Min DU/ac plus structured parking and 10% retail	1.0 FAR	Meet either min DU/ac or min FAR Fill-in with the other land use
North Creek /NE 195 ST	35	0.40	N/A	1.0 FAR	Meet either min DU/ac or min FAR Fill-in with the other land use

<u>Stakeholder Outreach</u>
At the public hearings, the Planning Commission received testimony from representatives of the Canyon Park Business Center Owners Association (CPBCOA) and Sound Transit (ST) raising questions and concerns about the proposed amendments. The letters submitted by the Association and Sound Transit are in Attachment 3. A brief staff response to the concerns is also included in Attachment 3. Staff also reached out to the Board representatives of the property owners' associations for the Monte Villa, Schnitzer and Bothell Business parks and met the Schnitzer and Bothell Business Park Board members. The feedback from these Associations was generally positive and supportive.

The central concerns raised by the Canyon Park Owners Association dealt with the minimum FAR (originally proposed at 0.60 for Canyon Park), how the minimum FAR could create non-conforming buildings and impacts of development on the private roads. The Planning Commission recommendation includes the lower 0.50 FAR proposed by the Owners Association and clearly states that existing buildings would not be required to meet the minimum FAR if they are expanded. Staff has reviewed past environmental documents for Canyon Park which analyzed impacts of development on the transportation system at much greater levels than the proposed minimum FAR.

Sound Transit has stated that the bus facility in Canyon Park would not be able to comply with the minimum FAR requirement as proposed and has requested an exemption as it pertains to essential public facilities. Planning Commission did not recommend an exemption for essential public facilities or a lower FAR for the bus facility.

Category: Public Hearing (continued)

- Mayor opens the public hearing
- Staff Presentation
- Public testimony
- Council Deliberations
- Motion to Approve Recommended Action
- Council Vote on Motion to Approve

Attachments:

1. Draft Ordinance
2. Planning Commission Findings, Conclusions and Recommendation
3. Exhibits received during the Public Hearings held before the Planning Commission

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Recommended Action:

Adopt the proposed, revised ordinance (Attachment 1) amending the *Imagine Bothell*… Comprehensive Plan, Land Use and Capital Facilities Elements and the Canyon Park and North Creek / NE 195 ST Subarea Plans; and amending BMC Title 11, Administration of Development Regulations; and BMC Title 12 Zoning including regulations for minimum densities and intensities within activity centers.

City Manager Approval: _____ Date: 12/12/2019

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ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE IMAGINE BOTHELL… COMPREHENSIVE PLAN CAPITAL FACILIITES ELEMENT, LAND USE ELEMENT, CANYON PARK AND NORTH CREEK / NE 195 ST SUBAREA PLANS AND TITLES 11 ADMINISTRATION OF DEVELOPMENT REGULATIONS AND TITLE 12 ZONING REGARDING THE PUBLIC SAFETY BOND AND MINIMUM DENSITY AND INTENSITY PLAN AND CODE AMENDMENTS.

WHEREAS, chapter 36.70A RCW, also known as the Growth Management Act ("the Act"), requires that cities subject to the Act adopt comprehensive plans and implementing development regulations consistent with the Act; and

WHEREAS, in accordance with the Act, the Bothell City Council, in 1994, adopted the *Imagine Bothell…* Comprehensive Plan and, in 1996, adopted implementing development regulations via amendments to the Bothell Municipal Code (BMC); and

WHEREAS, the Act provides that each jurisdiction's comprehensive land use plan and development regulations shall be subject to continuing review and evaluation; and

WHEREAS, the City of Bothell has adopted numerous amendments to the Plan and Code since 1994 and 1996, respectively; and

WHEREAS, the City Council initiated the 2019 Plan amendments including the Capital Facilities Plan as part of the 2019 Planning Docket and the minimum density and intensity Plan and Code amendments on June 18, 2019; and

WHEREAS, the Planning Commission conducted study sessions and a public hearing resulting in recommended 2019 Plan and Code amendments; and

WHEREAS, upon due consideration, the City Council finds that adoption of the recommended 2019 Capital Facilities Element and Minimum Density and Intensity Plan and Code amendments are in the public interest and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The Imagine Bothell… Comprehensive Plan Capital Facilities Element is hereby amended as follows with new text shown by underline and deleted text and

graphics shown in ~~strikethrough~~; all other provisions of this Element shall remain unchanged and in full force

Capital Facilities Element

*** * * No changes to the following sections * * ***

- Purpose and Relationship to GMA
- Planning Area Profile: Inventories, Future Needs, and Planned Capital Facilities
- City General Offices

City Fire and Emergency Medical Services Facilities

Inventory

Three firehouses are located within the city's Planning Area: the Downtown Firehouse, the Queensborough Firehouse, and the Canyon Park Firehouse (see map, **Figure CF-1**). All are within the city limits. The Queensborough Firehouse is owned by Fire District 10.

Fire Department facilities, with floor areas and current equipment and staffing levels in each as of 2019 ~~2014~~ and the planned new capital improvements authorized under the 2018 Public Safety Bond, are described in the following table ~~as follows~~ (see **Figure CF-1**):

Table CF-3
Fire and emergency medical services facilities inventory

Facility, location and land area	Available space	Current (2019) use	Existing (2019) ~~total~~ floor area	Proposed Floor area
Downtown Firehouse (Station 42) 10726 Beardslee Blvd. Land area: 68,016 sq. ft.	Emerg. Resp. Vehicles: 2 Engines 1 Aid Unit 1 Ladder 1 Medic Unit 1 Command Unit 24 hr. Response Personnel: *10 assigned *7.5 minimum	1 Battalion Chief 5 minimum operational staffing – 7 maximum 2 Medics **Jump crews respond with next available units. Facility at capacity.	3,748 sq. ft. = response crew quarters 4,185 sq. ft. = Apparatus Bay 8,323 sq. ft. = Administrative Offices Total Square Footage 16,256 sq. ft.	6,000 sq. ft. = response crew quarters 6,000 sq. ft. = Apparatus Bay 10,000 sq. ft. = Administrative Offices Total Square Footage 22,000 sq. ft.

Canyon Park Firehouse (Station 45) 1608 217th Pl. SE Land area: 32,000 sq. ft.	Emerg. Resp. Vehicles: 1 Engine 2 Aid Units	3 minimum operational staffing with 5 routinely staffed, ~~Maximum. If minimum Staffing, al respond to call If max. Staffing,~~ With 5 staff Engine and Aid are placed in service ~~both staffed~~ Facility at capacity.	4,752 sq. ft.	7,000 sq. ft.
Queensborough Firehouse (Station 44) 330 228th St. SE Owned by Snohomish County Fire Protection District 10 Land area: Part of federal FEMA property – not on separate parcel	Emergency Response Vehicles: 2 Engines 2 Aid Units 1 Utility Truck 1 Hazardous Materials Response Trailer	3 minimum operational staffing – 4 maximum All respond on any call Existing ~~F~~facility at capacity.	3,692 sq. ft.	No changes
Code Compliance ~~(portable) 9654 NE 182 Street~~ ~~Land Area:~~ ~~See City offices~~		1 Deputy Chief / Fire Marshal 1 Lt. / Plans Examiner 1 Firefighter / Inspector .5 Administrative Assistant Facility at capacity.	400 sq..ft.	No changes

* Paramedic services provided through contract with Shoreline Fire Department. Two paramedics and one medic unit housed at the Downtown Firehouse 24/7, 365.
** Response to calls are dictated by the number of staff available. Jump crews will utilize the appropriate apparatus depending on call type, i.e., If staffing is at 3 personnel and an aid call comes in, all 3 crew members will respond on the aid unit, leaving the fire engine unavailable to respond.

Future needs and planned capital facilities

Washington Administrative Code (WAC) 35.103 requires fire departments to establish a response time level of service (LOS), but does not dictate what the level of service should be. The WAC requires that the adopted standard be met 90 percent of the time. Accordingly, in 2011 the City Council adopted the following response time levels of service for the Fire and EMS Department:

- Overall system-wide response within 7 minutes and 15 seconds, 90 percent of the time.

- Other supporting LOS measures, all to be met at least 90 percent of the time:
  - First fire engine on location within 8 minutes;
  - First 15 firefighters on location of a structure fire within 13 minutes;
  - A responding apparatus on location of an emergency medical incident within 7 minutes;
  - First two hazardous material technicians on location of a hazardous materials incident within 15 minutes; and
  - First two technical rescue technicians on location of a technical rescue incident within 15 minutes.

Per the Bothell Fire Department's 2018 Annual Report, the total average response time in 2018 for fire and emergency medical incidents was 8 minutes and 11 seconds 90% of the time, or 56 seconds above the adopted LOS. The response time of the first fire engine at a fire incident was 8 minutes and 52 seconds 90% of the time (1 minutes and 37 seconds above the adopted LOS), and the response time of an emergency medical technician to an emergency medical incident was 8 minutes and 9 seconds 90% of the time (54 seconds above the adopted LOS).

Another common effective level of service standard is to look at fire response personnel per 1,000 capita. This helps compare service capabilities over-time and across jurisdictions. Fire suppression personnel are trained in emergency medical services and are all Washington State Emergency Medical Technician also trained in Defibrillation. There is overlap in the number of full-time equivalents for each activity. The Bothell Fire Department currently has 65 total on staff with 58 of them serving in operations as firefighters, or 1.1 firefighters per 1,000 residents.[1]

~~As of the writing of the 2015 Plan Update, the Fire Department reported that it was achieving the adopted LOS for overall system-wide response.~~

~~An overall response time LOS is useful for measuring performance of a service jurisdiction-wide, but by its nature can obscure deficiencies in portions of a jurisdiction. This can particularly be the case with provision of fire and emergency medical services, where response times can vary significantly depending on where within the jurisdiction fire stations are located.~~

~~To examine the relationship between response times and station locations in Bothell, and thereby provide useful information to policy-makers for future fire and EMS facilities decisions, the City in 2009 commissioned a study (Appendix CF-A-1) to provide guidance on the following questions, as stated in the report:~~

- ~~"Where should future fire stations be located for the City of Bothell to most efficiently serve its citizens?~~

[1] Based on the US Census Bureau's July 1, 2018 population estimate of 46,657 for the City of Bothell.

- ~~Could the City's coverage be improved by moving any existing stations?~~
- ~~Where might mutual aid across the border of the City and its surrounding fire districts or departments provide the best level of service for the cost?"~~

~~The study examined a number of station-location scenarios, including keeping the current three locations; maintaining three stations but relocating one or more of them; and constructing a new fourth station located in the south portion of Bothell. The analysis demonstrated that under any scenario involving only the three existing stations, even if one or more were relocated, the south portion of the City experiences longer response times, equating to a lower level of service. Only those scenarios that included a new south station showed response times roughly equivalent to those elsewhere in Bothell.~~

~~Areas adjacent to the south portion of Bothell, to the east in Woodinville, to the south in Kirkland, and to the west in Kenmore, also exhibit longer response times for the fire and EMS departments that serve those areas. In recognition of this shared concern, the City of Bothell and Woodinville Fire and Rescue (WFR)(Fire District 36) entered into an interlocal agreement in 2013, in conjunction with the 2014 annexation of all of Bothell's designated potential annexation areas in King County, to address this issue.~~

~~The agreement called for Bothell and WFR to collaborate to determine the feasibility of re-opening a closed WFR station, Station 34, located near south Bothell. The agreement further called for WFR to direct the proceeds from any future sale of Station 34 towards siting, design and construction of a new fire station "beneficially situated to serve both the City and WFR", subject to the Bothell City Council authorizing the construction of such new fire station.~~

In 2018, a third-party Facilities Analysis on space needs was prepared for Bothell Fire Stations. The study's purpose was to define operational space needs, provide conceptual facility and site planning at existing and potential new locations, and identify order of magnitude budget estimates. The analysis included the rebuild of Downtown Fire Station 42 and Canyon Park Fire Station 45 at the current site locations.

The Downtown Fire Station 42 that was built in 1980 (39 years old) and the Canyon Park Fire Station 45 was built in 1985 (33 years old) and are both outdated. The Public Safety Capital Bonds will fund the complete rebuild of the two fire stations including safety upgrades, technical modernization and energy efficiency to accommodate current and future growth. The new facilities will include safety requirements, installing sprinklers; improve the decontamination area for firefighter health and safety; provide industry-standard separate sleeping quarters for male and female firefighters; and space for on-site training and parking and accommodates future staffing needs. Canyon Park Fire Station 45 is proposed to house a new Police satellite office at the Canyon Park fire station to better serve North Bothell residents.

~~Also as of the writing of the 2015 Plan Update, the City is researching the possibility of consolidating fire departments under the model of a Regional Fire Authority (RFA), which would require voter approval. Departments consolidating as an RFA would include Bothell, Northshore (Fire District 16) and WFR.~~

~~Part of the RFA research involves analyzing the effects on response times of present and potential future locations of fire stations. Should the RFA be placed on the ballot and approved by voters, the City's Fire and EMS Department facilities and their locations would become the responsibility of the RFA.~~

* * * No other Changes to the Capital Facilities Element * * *

Section 2. The Imagine Bothell… Comprehensive Plan Land Use Element is hereby amended as follows with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this Element shall remain unchanged and in full force

Land Use Element

***No changes to the following sections: ***

- Purpose and Relationship to GMA
- VISION 2040 Regional Planning Statement
- Urban Growth Areas
- Bothell Planning Area
- Historical and Current Land Uses
- Land Use Plan Development
- Transfer of Development Rights (TDR)
- Consistency with Countywide Planning Policies

*****The following new section is added *****

Establishing minimum densities and intensities

The City of Bothell relies upon its plan designations and zoning classifications to meet the population and employment targets discussed above. For example, the 2012 King County Buildable Lands Report estimates that the R-AC designation achieves a dwelling unit per acre density range of 40 to 80 dwelling units per acre. Should the City not accommodate this growth assumption, the City's ability to achieve its assigned growth targets is compromised.

Accordingly, it is incumbent upon the City to assign minimum dwelling unit and employment capacity within this Land Use Element, applicable Subarea Plans and the City's implementing development regulations.

Land Use
Goals, Policies and Actions

Goals

*****No changes to the Land Use Goals*****

Policies

*****No changes to Policies LU-P1, LU-P2 and LU-P3*****

LU-P4 The City shall maintain a Comprehensive Plan Map (see **Figure LU-4** in map pocket) for the purpose of illustrating the proposed allocation of land uses throughout the Bothell Planning Area. Land uses shall be categorized by the following designations. It is intended that these designations be utilized separately where only one type of land use is determined to be appropriate, and in combination where more than one type of land use is determined to be appropriate. The development potential of any individual property under the land use designations of this Comprehensive Plan shall be based on the net buildable area of that property, and shall be further subject to land use techniques including, but not limited to, clustering, planned unit development, Low Impact Development, lot size averaging and lot rounding provisions, availability of necessary utilities, critical area regulations, impact mitigation, floor area ratios, and other applicable development policies, regulations and standards. Net buildable area, for the purposes of this Comprehensive Plan, shall mean the gross land area, measured in acres, minus land area in roads and other rights of way, critical areas, critical area buffers, and land dedicated to the City.

***** No changes to LU-P4 Paragraphs 1 through 3 *****

4. Residential – Activity Center (R-AC).
This designation shall provide for multi-family residential development in designated activity centers, and is intended to promote a variety of housing types in sufficient numbers to support a range of shopping, dining and entertainment opportunities within those centers.
The minimum number of dwelling units per acre will be established within the individual Subarea Plan containing an R-AC designation with the intended purpose of encouraging residential uses within activity centers where transit and multi-modal options are available. ~~No specific density is prescribed:~~ T~~t~~he maximum number of dwelling units which may be constructed on an individual property or within the center shall be controlled by site and building regulations concerning height, parking, landscaping, setbacks and other aspects of development.

13. Mixed Use (MU).
This designation does not indicate a land use by itself, but is intended to be utilized where integrated development of more than one type of land use within

a property or area is desired. Such integrated development may include but not be limited to coordinated building design, signage, landscaping, minimum densities and floor area ratios and access.

14. Activity Centers (R-AC in conjunction with OP, NB, CB, GC, and LI)
Within designated activity centers in conjunction with the R-AC designation, the OP, NB, CB, GC, and LI designations may have a minimum floor area ratio (FAR) established within the individual subarea plan. The maximum FAR shall be controlled by site and building regulations concerning height, parking, landscaping, setbacks and other aspects of development established within each subarea plan.

***** No further changes to the Land Use Element*****

Section 3. The Imagine Bothell… Comprehensive Plan Canyon Park Subarea Plan is hereby amended as follows with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this Subarea Plan shall remain unchanged and in full force

Canyon Park Subarea Plan

***No changes to the following sections: ***

- Summary
- Subarea Profile

Canyon Park Subarea Plan Elements

Land Use

Policies

Note: Many of the Land Use policies are depicted on **Figure 3** Land Use Designations.

1. The Canyon Park Subarea should continue to develop as community and regional activity centers, while expanding opportunities for multi-family residential development to promote affordable housing close to employment, shopping, and services.

   The Thrashers Corner and Canyon Park community activity centers should provide a shopping, dining, and entertainment focal point for those who live and work within the center or nearby. The maximum height of buildings in these centers should be four to six stories, or around 65 feet, to permit a vibrant and mutually supportive mix of retail, service, and office uses (at Thrasher's Corner) or retail, service, office, and

residential uses (at Canyon Park) while maintaining a sense of connection between the uppermost floors and street-level activity. In the Canyon Park community activity center, residential development should achieve minimum residential densities that accommodate projected population growth and reflect the character of the area and maximum residential densities ~~not be restricted to a specific density but should be~~ controlled by site and building envelope regulations, to promote a variety of housing types in sufficient numbers to support a range of activities within the center. Around the edges of these areas, appropriate setbacks should be applied to protect surrounding lower-intensity uses. Development of taller buildings should incorporate structured parking to keep the area compact and pedestrian-friendly. Public gathering places should be included in developments to promote socializing.

The Canyon Park regional activity center should provide opportunities for businesses to start and grow in Bothell, and for employees to work close to home. To ensure new non-residential buildings provide capacity to accommodate new companies or expansion of existing companies, a minimum floor area ratio should be employed with the maximum Floor area ratio to be controlled by site and building envelope regulations. The maximum height of buildings containing exclusively commercial uses within this center should be seven to ten stories, or around 100 feet, with additional height up to a total of around 150 feet permitted only to accommodate manufacturing processes which require a tall structure but few employees. The maximum height of buildings containing residential uses or mixed uses that include a residential use should be four to six stories or around 65 feet. Providing for buildings of such height would ensure that sufficient employment and population capacity exists to accommodate extended future growth within the existing boundaries of the area, thereby utilizing infrastructure efficiently and avoiding pressure to expand into established residential areas. Such buildings would be compatible with the scale of the valley setting -- around the edges of the area. However, appropriate setbacks are warranted to protect surrounding lower-intensity uses. Within the Canyon Park regional activity center, residential development is appropriate ~~at~~ for minimum residential densities with maximum densities controlled by site and building envelope regulations, to promote a variety of housing types in close proximity to places of work.

2. New development is subject to availability of necessary utilities, critical area regulations, and other development standards and mitigation requirements.

3. Land located in the northeast corner, immediately north of the southeast corner, and in the south central portion of the Subarea is appropriate for detached residential development at a minimum lot size of 9,600 square feet as described in Land Use Element Policy LU-P4 (R 9,600 in the northeast, south central and southeast portions of the map).

4. Land located on either side of SR-527, south of Filbert and Maltby Roads to the alignment of about 212th Street, comprising the Thrasher's Corner community activity center, is appropriate for residential dwellings at minimum net residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential

densities and floor area ratios controlled by site and building envelope regulations and a building height of four to six stories or approximately 65 feet, office-professional and community business uses subject to critical area regulations and other development standards and mitigation requirements (**R-AC, OP, CB** in the north central portion of the map). Any such development should provide a buffer adjacent to lower density residential development to the east and west. Such a buffer may consist of the existing wetlands in the east and west borders of this area.

5. Land located west of North Creek and south of Filbert Road to the alignment of about 212th Street is appropriate for attached or detached residential development at one dwelling unit per 5,400 square feet as described in Land Use Element Policy LU-P4 (**R 5,400a** in the northwest corner of the map).

6. Land located west of SR-527 between the alignment of 212th Street SE and 217th ST, within the Canyon Park regional activity center, is appropriate for residential dwellings at minimum residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations, office professional, community business, and light industrial uses subject to compliance with critical areas regulations and other development standards and mitigation requirements (**R-AC, OP, LI** in below the northwest corner of the map). Such development shall incorporate internal access from property to property and shall provide shared driveways to minimize access points onto SR-527.

7. Land located west of SR-527 approximately 450 feet north of the intersection of SR-527/214th Street SE and east of North Creek is appropriate for residential dwellings at minimum residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations, office professional, neighborhood business, and light industrial uses subject to compliance with critical areas regulations and other development standards and mitigation requirements (**R-AC, OP, NB, LI** in the northwest corner of the map)

8. Land located east of SR-527 between the alignment of 212th Street SE and 220th Street SE is appropriate for residential dwellings at minimum net residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations and a building height of four to six stories or approximately 65 feet, office professional, community business, and light industrial uses subject to compliance with critical areas regulations and other development standards and mitigation requirements (**R-AC, OP, CB, LI** in the central portion of the map). Such development shall incorporate internal access from property to property and shall provide shared driveways to minimize access points onto SR-527.

9. Land southwest of I-405, comprising the Canyon Park community activity center, is appropriate for residential dwellings at minimum net residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations. Office-professional and community business uses are subject to compliance with critical area regulations and other development standards and mitigation requirements (**R-AC, OP, CB** in the southwest corner of the map). This designation reflects current uses in the area and additionally provides for residential development convenient to shopping, services, and transit.

10. Land south of 228th Street SE between 15th and 19th Avenues SE is appropriate for attached or detached residential development at one dwelling unit per 2,800 square feet as described in Land Use Element Policy LU-P4 (**R 2,800** on southernmost portion of map).

11. Land to the southeast of the Village Square neighborhood is appropriate for attached or detached residential development at one dwelling unit per 4,000 square feet as described in Land Use Element Policy LU-P4 (**R 4,000** on south central portion of map).

12. The portion of the Canyon Park Business Center between SR 527 and 17th Avenue SE, south of 220th Street SE and north of I-405 is designated for residential dwellings at minimum net residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations, Office-Professional and Community Business to reflect planned and existing uses (**R-AC, OP, CB** in southwest area of map).

13. Land in the southeast corner of the Subarea is appropriate for attached or detached residential development at one dwelling unit per 5,400 square feet as described in Land Use Element Policy LU-P4 (**R 5,400a** in the southeast corner of map).

14. The remainder of the Subarea is appropriate for residential dwellings at minimum net residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area with maximum residential densities and maximum floor area ratios controlled by site and building envelope regulations and building heights of four to six stories or approximately 65 feet and continued business park development, subject to critical area regulations and other development standards and mitigation requirements, and therefore is designated office-professional and light industrial (**R-AC, OP, LI** on majority of map).

*****No changes to the remaining Canyon Park Subarea Policies and Actions*****

Section 4. The Imagine Bothell… Comprehensive Plan North Creek / NE 195 ST Subarea Plan is hereby amended as follows with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this Subarea Plan shall remain unchanged and in full force

North Creek / NE195th Street Subarea Plan

***No changes to the following sections: ***

- Summary
- Subarea Profile

North Creek Subarea Plan Elements

Land Use

Policies

Note: Many of the Land Use policies are depicted on **Figure 3** entitled Land Use Designations.

1. Land containing a critical area or areas is subject to regulations which may reduce the density or intensity of development allowed to less than that indicated by the plan designation.

2. The valley floor, located generally below the 50 foot contour line, is designated as Subdistrict A where Office Professional, Light Industrial, Community Business and residential dwellings at minimum residential densities and minimum floor area ratios that accommodate projected population and employment growth and reflect the character of the area and maximum residential densities and floor area ratios controlled by site and building envelope regulations are appropriate (**R-AC, OP, CB, LI** throughout most of the central portion of the map). Examples of allowed uses shall include non-polluting manufacturing (clean light industrial), business-professional offices, educational facilities, recreation facilities, non-freeway oriented public accommodations, retail uses, hospitals, clinics, medical-professional offices and multi-family residential uses. Within that portion of this designation along 120th Ave NE, a minor arterial, and south of the North Creek Business Park, motor vehicle sales involving outdoor display and storage is appropriate due to the commercial nature of other existing development in this area. Single-family and mobile homes are not permitted in this area. This designation shall extend east of the utility corridor

approximately 500 feet in the southeast portion of the subarea. All other areas of the Subarea is designated as Subdistrict B.

*****No changes to the remaining North Creek / NE 195 ST Subarea Policies and Actions*****

Section 5. Section 11.02.007 of the Bothell Municipal Code (BMC), providing definitions for words and phrases beginning with the letter "F," is hereby amended to include a new definition for the phrase "Floor area ratio," with such definition as follow; the remainder of the section is unchanged.

"Floor area ratio" means the relationship between the total amount of gross floor area of a building or the amount of gross square footage a building is permitted to become, and the net or buildable area of a parcel on which the building is located. This ratio is determined by dividing the total, or gross, floor area of the building by the net or buildable area of the parcel.

Section 6. Section 11.02.050 of the Bothell Municipal Code (BMC), providing definitions for words and phrases beginning with the letter "M," is hereby amended to include a new definition for the phrase "Mixed-Use Development," with such definition as follow; the remainder of the section is unchanged.

"Mixed- Use development" means an integrated development where more than one type of land use (e. g. residential, retail, office, and other non-residential) is located in a single or multiple buildings on a single or multiple parcel(s), or building(s).

Section 7. BMC 12.04 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

Chapter 12.04
ZONING CLASSIFICATIONS, SUBAREAS, MAPS, AND BOUNDARIES

Sections:

12.04.010 Purpose.
12.04.020 Zoning classifications.
12.04.025 Agricultural zoning classification.
12.04.030 Residential zoning classifications.
12.04.035 Specialized Senior Housing Overlay zoning classification.
12.04.040 Office-Professional zoning classification.
12.04.050 Neighborhood Business zoning classification.
12.04.060 Community Business zoning classification.
12.04.065 Motor Vehicle Sales Overlay zoning classification.
12.04.070 General Commercial zoning classification.
12.04.080 Light Industrial zoning classification.
12.04.085 North Creek Fish and Wildlife Critical Habitat Protection Area.

12.04.090 Shoreline master program.
12.04.100 Mobile Home Park Overlay zoning classification.
12.04.105 Activity Centers
12.04.110 Canyon Park Annexation concomitant zoning agreements.
12.04.120 Subareas.
12.04.130 Downtown subarea regulations.
12.04.140 Adoption of city-wide and subarea zoning maps.
12.04.150 Boundaries – Administrative determination.
12.04.160 Boundaries – Hearing body recommendation – City council determination.

12.04.010 Purpose.
The purpose of this chapter is to establish and describe the purpose of zoning classifications utilized in this title, and to establish maps which depict the geographic allocation of those zoning classifications throughout the city. (Ord. 2053 § 3 (Exh. C), 2010; Ord. 1946 § 2, 2005; Ord. 1815 § 1, 2000; Ord. 1685, 1997; Ord. 1629 § 1, 1996).

12.04.020 Zoning classifications.
In order to regulate the use of land and structures, the city is divided into the following land use zoning classifications. The development potential of any individual property under these zoning classifications shall be based on the net buildable area of that property, and shall be further subject to planned unit development provisions, availability of necessary utilities, critical area regulations, impact mitigation and other applicable development policies, regulations and standards. For the purposes of this title, "net buildable area" means gross land area, measured in acres, minus land area in roads and other rights-of-way, critical areas, critical area buffers, and land dedicated to the city.

Name	Symbol
Agricultural	AG
Residential, 40,000 square foot minimum lot size	R 40,000
Residential, 9,600 square foot minimum lot size, except as may be allowed under lot size averaging regulations set forth in BMC 12.14.030(B)	R 9,600
Residential, 8,400 square foot minimum lot size	R 8,400
Residential, 7,200 square foot minimum lot size	R 7,200
Residential, 5,400 square foot minimum lot size, detached	R 5,400d
Residential, one dwelling unit per 5,400 square feet of net buildable area, attached or detached	R 5,400a
Residential, one dwelling unit per 4,000 square feet of net buildable area	R 4,000
Residential, one dwelling unit per 2,800 square feet of net buildable area	R 2,800
Residential – Activity Center (see subarea plan for minimum ~~no specific~~ density; maximum number of units controlled by site and building envelope regulations)	R-AC

Office-Professional	OP
Neighborhood Business	NB
Community Business	CB
General Commercial	GC
Light Industrial	LI
Specialized Senior Housing Overlay	SSHO
Mobile/Manufactured Home Park Overlay	MHP
Motor Vehicle Sales Overlay	MVSO
North Creek Fish and Wildlife Critical Habitat Protection Area	NCFWCHPA

Zoning classifications are applied separately (e.g., R 2,800) where one category of land use is determined to be appropriate as designated by the Imagine Bothell... Comprehensive Plan, and in combination (e.g., R 2,800, OP, CB) where more than one category of land use is determined to be appropriate as designated by the plan. When used in combination, the most permissive regulations of the combined zones shall apply, unless specifically provided otherwise such as, minimum density and minimum floor area ratio requirements which must be met.

***** No changes to 12.04.025 through 12.04.100 *****

12.04.105 Activity Centers
Within designated activity centers in conjunction with the R-AC zone classification, the OP, NB, CB, GC, and LI zones may have a minimum floor area ratio (FAR) established within the individual subarea plan regulations. The maximum FAR shall be controlled by site and building regulations concerning height, parking, landscaping, setbacks and other aspects of development established within each subarea plan.

*****No Changes to 12.04.085 through 12.04.160 *****

Section 8. BMC 12.06.020 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

12.06.020 Interpretation of land use tables.

A. The land use tables in this chapter determine whether a specific use is allowed in a zone classification. Specific uses are divided among 17 tables, each of which represents a broad category of land use. The tables are arranged in alphabetical order by land use category, as listed at the beginning of this chapter. Within each table, zone classifications

are located in vertical columns and specific uses are arranged alphabetically in horizontal rows.

B. If no symbol appears in the box at the intersection of a column and a row, the use is not allowed in that zoning classification.

C. If the letter "P," for "Permitted," appears in the box at the intersection of a column and a row, the use is allowed in that classification, subject to the development and operational requirements of this and other applicable titles. The conduct or development of a permitted use may require approvals including but not limited to land clearing, grading, plumbing, mechanical and building permits. The procedures for applying for such approvals shall be as set forth in BMC Title 11, Administration of Development Regulations.

D. If the letter "C," for "Conditional," appears in the box at the intersection of a column and a row, the use is allowed subject to conditional use permit procedures and requirements and other development and operational requirements of this and other applicable titles. The conduct or development of a conditional use shall require approval of a conditional use permit in addition to other approvals as set forth in subsection C of this section. Procedures for applying for a conditional use permit shall be as set forth in Chapter 12.28 BMC and BMC Title 11, Administration of Development Regulations.

E. If a number appears in the box describing the use, or in the box at the intersection of a column and a row, the use is subject to specific development and/or operational requirements which may be in addition to or in place of general requirements of this and other applicable titles. Such use-specific requirements typically follow the table and correspond to the number in the table, although some such requirements, such as those for specialized senior housing, are set forth in separate chapters.

F. Where multiple zoning classifications are combined (e.g., OP, LI), the most permissive land use regulations of the individual zoning classifications shall apply, unless specifically provided otherwise or as stipulated within a subarea regulation. For example, if a use is not permitted in the OP zone but is permitted in the LI zone, the use is permitted on land zoned OP, LI.

G. Any proposed use not listed in the table shall be classified by the community development director as permitted, conditional, or not permitted, based on the listed use to which the proposed use is most similar. If the community development director determines that the proposed use is not similar to any use in the table, the proposed use shall not be permitted. The determination of the community development director shall be appealable to the hearing body.

H. Permitted uses as established by this chapter may be modified by subarea regulations.

*****No other changes to 12.06*****

Section 9. BMC 12.14 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

Chapter 12.14
AREA, DIMENSIONS AND DESIGN

Sections:

12.14.010 Purpose.
12.14.020 Interpretation of tables.
12.14.030 Residential area and dimensions.
12.14.040 Commercial and industrial dimensions.
12.14.050 Setbacks – General measurement method.
12.14.060 Setbacks – Adjoining alleys.
12.14.070 Setbacks – Applying to specific building or use.
12.14.080 Setbacks – Modifications.
12.14.085 Setbacks – Offspring lot setbacks applicable within attached residential zones.
12.14.090 Setbacks – Projections and facilities allowed.
12.14.100 Setbacks – Panhandle lots.
12.14.110 Building height – General measurement method.
12.14.120 Building height – Exceptions to limit.
12.14.130 Building limitations – Accessory buildings and structures.
12.14.135 Floor area ratios
12.14.135 Accessory dwelling units.
12.14.140 Building and hard surface coverage.
12.14.150 Fences and freestanding walls.
12.14.152 Retaining walls, rockeries, and other retaining structures.
12.14.155 Storage space and collection points for recyclables and garbage.
12.14.160 Lot divided by zone boundary.
12.14.170 Site and exterior building design, generally.
12.14.180 Site design.
12.14.190 Exterior building design.
12.14.200 Exterior building design – Multiple-family residential.
12.14.210 Exterior building design – Commercial and industrial.
12.14.220 Exterior building design – Multifamily residential, commercial or industrial development abutting single-family residential zoning.
12.14.230 Design of developments on or adjacent to historic register or historic inventory properties.
12.14.240 Exterior lighting.
12.14.250 Alternative energy infrastructure.

12.14.010 Purpose.

The purpose of this chapter is to establish area, dimension and design regulations which comply with and implement the goals and policies of the Imagine Bothell... Comprehensive Plan with respect to the desired intensity and appearance of development within the city's residential, commercial and industrial areas.

12.14.020 Interpretation of tables.

A. BMC 12.14.030 and 12.14.040 contain city-wide general density and dimension standards for the various zones. Subarea regulations may establish specific and different density and dimensional standards and take precedent over city-wide regulations. Methods for measuring these city-wide standards are set forth in this Chapter ~~BMC 12.14.050 through 12.14.140.~~

B. The area and dimension standards are arranged in a table for each of two general land use categories:

1. Residential;
2. Commercial/industrial.

C. Development standards are listed down the left side of both tables, and the zones are listed at the top. The matrix cells contain the area and dimensional requirements of each zone. All dimensions are measured in lineal feet, and all areas are measured in square feet. The parenthetical numbers in the matrix identify specific requirements or other information which is set forth following the matrix.

12.14.030 Residential area and dimensions.

A. Development Standards Table.

Residential Development Standards (1)	Zoning Classification								
	R 40,000	R 9,600	R 8,400	R 7,200	R 5,400d	R 5,400a	R 4,000	R 2,800	R-AC (always in combination with OP, NB, CB, and/or LI)
Minimum lot area per single-family dwelling unit (square feet) (2)(10)(11)	40,000	9,600 avg.; 8,400 min. per BMC 12.14.030 (B)(2)	8,400	7,200	5,400	None	None	None	None
Minimum land area per multifamily dwelling						5,400	4,000	2,800	None (9)

Residential Development Standards (1)	Zoning Classification								
	R 40,000	R 9,600	R 8,400	R 7,200	R 5,400d	R 5,400a	R 4,000	R 2,800	R-AC (always in combination with OP, NB, CB, and/or LI)
unit (square feet) (3)									
Maximum lot area per single family dwelling unit (square feet) (2)	150% of underlying zone	150% of underlying zone	150% of under-lying zone	150% of under-lying zone	150% of under-lying zone				
Minimum density (3)(6)						150% of under-lying zone	150% of under-lying zone	150% of under-lying zone	As established for designated centers (6)
Minimum lot circle diameter (4)	150	70 – 80 per BMC 12.14.030 (B)(4)	70	60	50	None	None	None	None
Minimum front yard setback (5)(10)	30	20	20	20	20	20	20	20	See BMC 12.14.040(A)
Minimum rear yard setback (5)(10)	35	15	15	15	15	15	25	25	
Minimum side yard setback: One side yard Combined side yards (5)(10)(11)	5 15	5 15	5 15	5 15	5 15	5 15	5 15	5 15	
Maximum building height (6)	30 35 in certain	30 35 in certain	30 35 in certain	30 35 in certain	30 35 in certain	30 35 in certain	35	35, or as establishe d for designate	As established for designated centers (6)

Residential Development Standards (1)	Zoning Classification								
	R 40,000	R 9,600	R 8,400	R 7,200	R 5,400d	R 5,400a	R 4,000	R 2,800	R-AC (always in combination with OP, NB, CB, and/or LI)
	situations (6)	situations (6)	situations (6)	situations (6)	situations (6)	situations (6)		d centers (6)	
Maximum building coverage (7)	35%	35%	35%	35%	35%	50%	50%	50%	See BMC 12.14.040(A)
Maximum accessory building coverage (8)	5%	5%	5%	5%	5%	5%	5%	5%	See BMC 12.14.040(A) (no limit except for landscaping requirements)
Maximum hard surface coverage (7)	35%	45%	50%	65%	70%	70%	75%	75%	80%
	The area within the front yard setback shall not contain any hard surface except for driveways, walkways, and structures allowed to project into the setback in accordance with BMC 12.14.090. If critical areas are present anywhere on the property, impervious surface coverage is further regulated by BMC Title 14, Environment.					If critical areas are present anywhere on the property, impervious surface coverage is further regulated by BMC Title 14, Environment.			

B. Notes.

1. General Notes.

a. Where a district combines multiple zoning classifications (e.g., R-AC, OP, CB), the most permissive standards of the individual zoning classifications shall apply.

b. Development standards may be modified through the planned unit development process. See Chapter 12.30 BMC.

c. Development standards for mobile/manufactured home parks are contained in Chapter 12.08 BMC.

2. Single-Family Minimum, Average and Maximum Lot Area.

a. In the R 40,000, R 8,400, R 7,200 and R 5,400d zones, no lot shall be less than the minimum lot area per single-family dwelling unit, except as may otherwise be permitted under an approved planned unit development, in accordance with Chapter 12.30 BMC or under Fitzgerald/35th Avenue SE Subarea regulations in accordance with Chapter 12.52 BMC. No more than one primary dwelling unit shall be placed on a lot.

b. In the R 9,600 zone, subdivisions shall achieve an average of no less than 9,600 square feet per lot, except as may be otherwise permitted under

an approved planned unit development, in accordance with Chapter 12.30 BMC or under Fitzgerald/35th Avenue SE Subarea regulations in accordance with Chapter 12.52 BMC. That is, the total area of all lots within a proposed subdivision divided by the number of lots shall amount to an average lot area of at least 9,600 square feet. Twenty percent of the lots in a subdivision may be smaller than 9,600 square feet, but no lot shall be smaller than 8,400 square feet, nor larger than 14,400 square feet. No more than one primary dwelling unit shall be placed on a lot.

c. In order to promote efficient use of land, no subdivision shall contain any lot having more than one and one-half times the minimum lot area, in the R 40,000, R 8,400, R 7,200 and R 5,400d zones, or one and one-half times the average lot area, in the R 9,600 zone (i.e., 14,400 square feet), except as follows:

(1) Any subdivision of four lots or fewer may contain larger lots, but the property lines of such a subdivision shall be laid out so as to allow future subdivisions which comply with this subsection;

(2) A subdivision of five or more lots may contain larger lots to accommodate phasing of the subdivision; provided, that at completion of all phases, the subdivision complies with this subsection;

(3) A subdivision of five or more lots may contain a larger lot to permit the preexisting house and any related outbuildings and grounds to be retained intact on one property;

(4) These maximum lot size regulations do not apply to any common tracts for critical area protection, open space retention, storm water retention/detention or other purposes as may be required by the city as a condition of subdivision approval.

d. Land area in roads and other rights-of-way, critical areas, critical area buffers, or land dedicated to the city, shall not be included in any proposed single-family lot, unless so stated in the conditions of an approved planned unit development, in accordance with Chapter 12.30 BMC.

e. Land in an access easement, utility easement, or other form of easement which is not set aside as a separate tract shall be counted as part of the area of a parcel for the purpose of calculating minimum lot area.

3. Multifamily Minimum and Maximum Density.

a. In the R 5,400a through R 2,800 zones, one dwelling unit shall be allowed for each whole number multiple of the stated minimum land area per multifamily dwelling unit except as otherwise may be permitted under an approved conditional use permit for specialized senior housing, in accordance with Chapter 12.10 BMC.

b. In order to promote efficient use of land, no multifamily development in the R 5,400a through R 2,800 zones shall contain fewer units than would

result if the total number of units were calculated at one and one-half times the minimum land area per multifamily dwelling unit for the zoning classification in which the subject property is located, except as follows:

(1) The total number of units may be fewer than as required above if the development is proposed to be phased; provided, that at completion of all phases, the development complies with the above requirements;

(2) These minimum density regulations do not apply to any multifamily/commercial combination zoning classification (e.g., R 2,800, OP, CB);

(3) These minimum density regulations do not apply to any common tracts for critical area protection, open space retention, storm water retention/detention or other purposes as may be required by the city as a condition of development approval.

c. In the R-AC zone, minimum residential density shall be consistent with the applicable subarea regulations.

d. In the R 5,400a through R 2,800 zones, land area in critical areas, critical area buffers, or land dedicated to the city shall not be counted in the calculation of number of units or offspring lots allowed, unless so stated in the conditions of an approved planned unit development, in accordance with Chapter 12.30 BMC.

e. Land in an access easement, utility easement, or other form of easement which is not set aside as a separate tract shall be counted as part of the area of a parcel for the purpose of calculating number of units allowed.

4. Each lot must be of sufficient size to fully accommodate the diameter circle specified in the development standards table under this section for the underlying zoning designation except as may otherwise be permitted under an approved planned unit development, in accordance with Chapter 12.30 BMC or under Fitzgerald/35th Avenue SE Subarea regulations in accordance with Chapter 12.52 BMC. In the R 9,600 zone, the lot circle diameter shall be 80 feet for lots of 9,600 square feet or larger, and shall decrease proportionally with smaller lot sizes to a minimum diameter of 70 feet for lots of 8,400 square feet. Critical areas as defined under Chapter 14.04 BMC and their associated buffers shall not be included within the lot circle.

5. Setbacks.

a. “Setback” shall mean the distance from the lot line to the point where a structure may be constructed, not including those structures permitted under BMC 12.14.090 to project into the setback. The area between a lot line and a setback is a yard. Setbacks shall be in accordance with BMC 12.14.050 through 12.14.100.

b. Garages, carports, and other structures whose intent is to house or provide parking for vehicles shall be set back from streets and access tracts a minimum of 20 feet.

c. Special setbacks apply to specific building types, uses and accessory structures. See BMC 12.14.070.

6. Specific building height, minimum residential densities and minimum floor area ratios ~~shall be measured as set forth in BMC 12.14.110 through 12.14.130. Special building height regulations~~ may apply to certain activity centers ~~and within certain residential zones~~ as follows:

a. Within the following activity centers identified in the Imagine Bothell... Comprehensive Plan and illustrated in Figure 12.14-0:

(1) Filbert/Winesap neighborhood activity center, in accordance with Chapter 12.72 BMC ~~12.72.030~~.

(2) Juanita-Woodinville Way/I-405 neighborhood activity center, in accordance with Chapter 12.60 BMC.

(3) Maltby/York/Jewel neighborhood activity center, in accordance with Chapter 12.74 BMC ~~12.60.040 and 12.66.035~~.

(4) Canyon Park community activity center, in accordance with Chapter 12.44 and 12.48 BMC ~~12.44.020 and 12.48.040~~.

(5) Downtown community activity center, in accordance with Chapter 12.64 BMC. ~~12.64.202 Building Height~~ (Downtown Specific Definition

(6) Thrasher's Corner community activity center, in accordance with Chapter 12.48 and 12.74 BMC. ~~12.48.020 and 12.74.040~~

(7) Canyon Park regional activity center, in accordance with Chapter 12.48 BMC ~~12.44.020 and 12.48.040~~.

(8) North Creek regional activity center, in accordance with Chapter 12.56 BMC ~~12.56.080~~.

(9) Country Village / Bothell-Everett Highway / Lake Pleasant / Bothell-Everett Highway neighborhood activity center in accordance with Chapter 12.46 BMC.

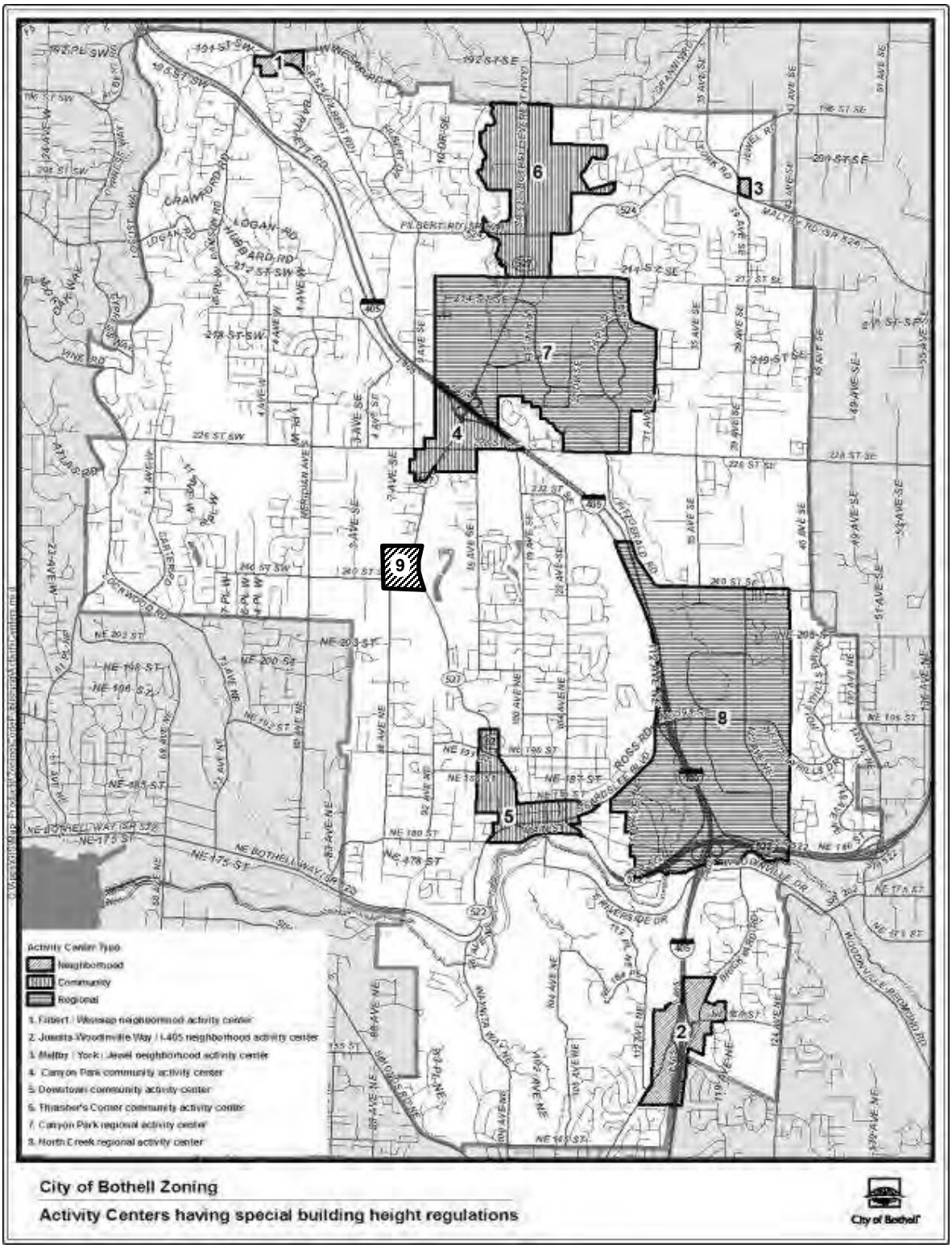

Activity Center Type
Neighborhood
Community
Regional
1. Filbert / Wasteep neighborhood activity center
2. Juanita-Woodinville Way / I-405 neighborhood activity center
3. Maltby / York / Jewel neighborhood activity center
4. Canyon Park community activity center
5. Downtown community activity center
6. Thrasher's Corner community activity center
7. Canyon Park regional activity center
8. North Creek regional activity center
City of Bothell Zoning
Activity Centers having special building height regulations
City of Bothell

Fig. 12.14-0

b. Within the R 40,000, R 9,600, R 8,400, R 7,200, R 5,400d, and R 5,400a zones, single-family residential structures which incorporate peaked roofs having a minimum roof pitch of four feet vertical for every 12 feet horizontal (4:12) may be up to 35 feet in height under any of the following conditions:

(1) Lots within subdivisions of five lots or greater that are recorded after October 27, 2007, and are 50 feet or more from the exterior boundary of said subdivision; provided, however, that this 50-foot limitation shall not apply under any of the following circumstances:

(A) Where the subdivision applicant or subsequent lot purchaser receives permission from the adjacent property owner or owners to allow structures up to 35 feet tall within the 50 feet, and a notarized copy of said permission is provided to the city; or

(B) Where the subdivision is adjacent to a property which is undeveloped; or

(C) Where the subdivision is adjacent to an open space tract which is at least 50 feet wide and dedicated as part of an adjacent development; or

(D) Where the subdivision is adjacent to property which is zoned R 40,000 through R 5,400a and contains a nonresidential use such as a church, school or municipal use; or

(E) Where the subdivision is adjacent to multifamily or nonresidential zoning which permits structures at least 35 feet in height; or

(F) Where the subdivision is adjacent to another subdivision qualifying for 35-foot-tall structures under these regulations; or

(G) Where the subdivision is adjacent to a public right-of-way at least 50 feet in width; or

(H) Where a 12-foot-wide Type II landscape buffer tract plus a 25-foot setback are provided; or

(2) On existing lots of record when each adjacent property meets at least one of the following criteria:

(A) The primary residential structures on the adjacent property are at least 50 feet from the boundary of the subject lot; or

(B) The adjacent property is zoned R 40,000 through R 5,400a and contains a nonresidential use such as a church, school or municipal use; or

(C) The adjacent property has multifamily or nonresidential zoning which permits structures at least 35 feet in height; or

(D) The adjacent property is a subdivision which qualifies for 35-foot-tall structures under these regulations; or

(3) On existing lots of record when a 12-foot-wide Type II landscape buffer plus a 25-foot setback are provided on the subject property.

7. Building and hard surface coverage shall be measured as set forth in BMC 12.14.140. For the purposes of this section, driveways within the front yard setback shall be no wider than necessary to accommodate three vehicles across, and walkways within the front yard setback shall not exceed five feet in width.

a. Notes. Hard surfaces legally established on a site prior to December 31, 2016, and which exceed the limits set forth in this section and BMC 12.14.040 shall be subject to nonconforming provisions of Chapter 12.26 BMC.

b. In determining the building and hard surface coverage for a panhandle lot, the handle or access portion of the lot shall not be used to determine hard surface coverage. Building and hard surface coverage shall be measured as though no handle was on the lot.

8. Accessory building coverage shall be measured as set forth in BMC 12.14.130. When combined, the primary and accessory building coverage shall not exceed the maximum building coverage as established above. Garages and carports located in R-8,400, R-7,200 and R-5,400d zoned properties may exceed the five percent coverage limitation, provided the garage or carport is 480 square feet in area or less. Combined garages and carports in R-5,400a, R-4,000 and R-2,800 zoned properties shall not be subject to the 480-square-foot maximum, but are limited to an area no greater than five percent of the lot area.

Detached accessory dwelling units may exceed the five percent coverage limitation, as long as they meet the size limits in BMC 12.14.135(B)(5)(a).

9. Within the R-AC zoning classification, minimum residential ~~no specific~~ density is prescribed in the applicable subarea regulations. The maximum number of dwelling units attainable shall be controlled by the applicable site and building envelope design regulations.

10. Lands with a zoning classification of R 5,400a, R 4,000, R 2,800, DC, DT, DN, GDC, or R-AC where offspring lots are proposed to be created within a parent site through the subdivision provisions of BMC Title 15 may apply setback dimensions to the offspring lots as set forth in BMC 12.14.085.

11. Within specific subareas duplexes shall be allowed on individual lots to meet affordable housing requirements (see Chapter 12.07 BMC). Such duplexes do not need to meet the side yard setbacks for the common walls between dwelling units, but all duplex lots shall provide all setbacks from adjacent property lines pursuant to subsection A of this section.

12.14.040 Commercial and industrial dimensions.

A. Development Standards Table.

Commercial and Industrial Development Standards (1)	Zoning Classification				
	OP	NB	CB	GC	LI
Minimum front yard setback (2)	Setbacks shall be the distance required for landscaping, in accordance with Chapter 12.18 BMC, except as otherwise provided under BMC 12.14.080				
Minimum rear yard setback (2)					
Minimum side yard setback (2)					
Maximum building height (3)	35, or as established for designated centers (3)	35, or as established for designated centers	35, or as established for designated centers (3)	35	35, or as established for designated centers (3)
Floor area ratios (3)	As established for designated centers	As established for designated centers	As established for designated centers	As established for designated centers	As established for designated centers
Maximum building coverage (4)	100%, except for any required landscaping, in accordance with Chapter 12.18 BMC, and required critical areas and their buffers, in accordance with BMC Title 14, Environment				
Maximum hard surface coverage (4)					

B. Notes.

1. General Notes.

a. Where a district combines multiple zoning classifications (e.g., R-AC, OP, CB), the most permissive standards of the individual zoning classifications shall apply provided, however, that within activity centers, minimum density and/or floor area ratio requirements as established within the applicable subarea regulations shall be met.

b. Development standards may be modified through the planned unit development process consistent with Chapter 12.30 BMC.

2. Setbacks shall be in accordance with BMC 12.14.050 through 12.14.100.

3. Specific b~~B~~uilding height, minimum residential densities, and minimum floor area ratios ~~shall be measured as set forth in BMC 12.14.110 through 12.14.130. Special building height regulations~~ may apply in the following activity centers identified in the Imagine Bothell... Comprehensive Plan and illustrated in Figure 12.14-0:

a. Canyon Park community activity center, in accordance with Chapter 12.44 and 12.48 BMC ~~12.44.020 and 12.48.040~~.

b. Thrasher's Corner community activity center, in accordance with Chapters 12.48 and 12.74 BMC~~12.74.040. 12.48.020 and 12.78.040~~

c. Canyon Park regional activity center, in accordance with Chapter 12.48 BMC. ~~12.60.025 and 12.66.035~~

d. North Creek regional activity center, in accordance with Chapter 12.56 BMC. ~~12.56.080~~

e. Downtown community activity center, in accordance with Chapter 12.64 BMC. ~~12.64.202 Building Height~~ (Downtown Specific Definition)

f. Juanita-Woodinville Way/I-405 neighborhood activity center, in accordance with Chapter 12.60 and 12.66 BMC. ~~12.60.025 and 12.66.035~~

g. Filbert/Winesap neighborhood activity center, in accordance with Chapter 12.72 BMC.~~12.72.030~~

h. Maltby/York/Jewel neighborhood activity center, in accordance with Chapter 12.74 BMC. ~~12.74.050~~

i. Country Village / Bothell-Everett Highway / Lake Pleasant / Bothell-Everett Highway neighborhood activity center in accordance with Chapter 12.46 BMC.

4. Building and hard surface coverage shall be measured as set forth in BMC 12.14.140.

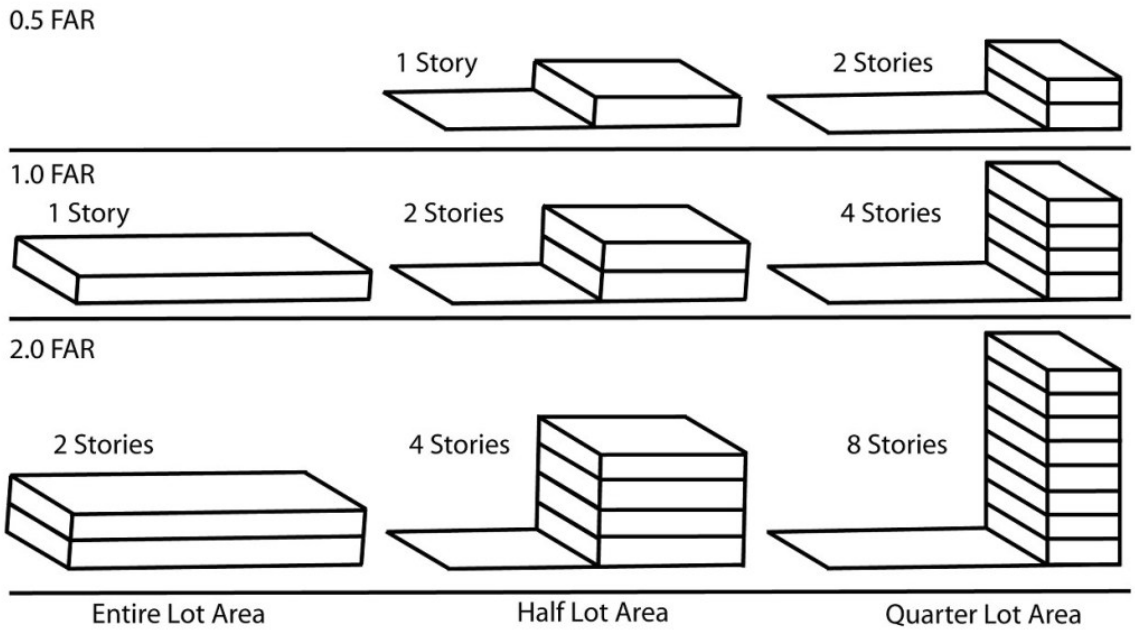
*****No changes to 12.14.050 through 12.14.130*****

12.14.135 Floor Area Ratios

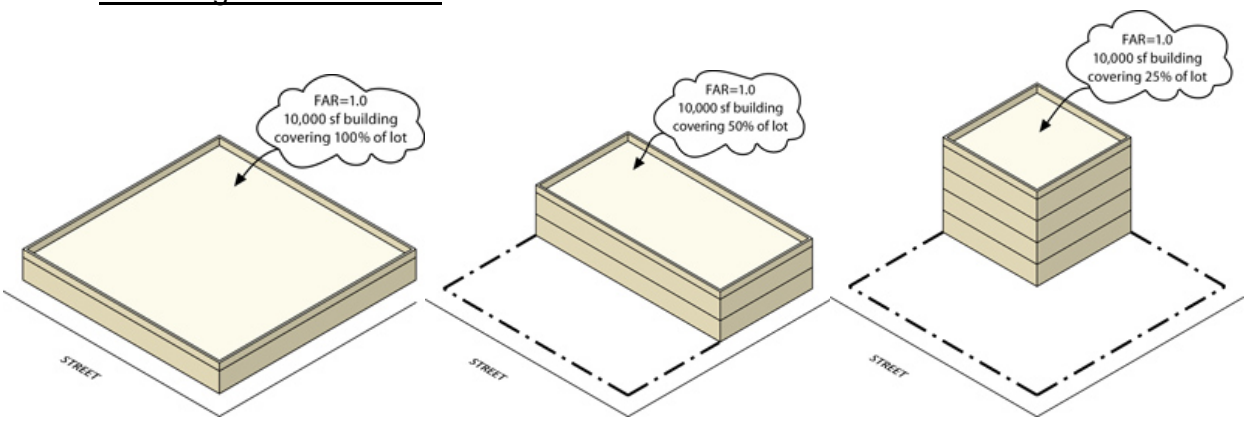
Floor area ratio (FAR) is a mechanism for establishing a relationship between the floor area of a building and the size of the parcel upon which the building is located.

A. FAR is calculated using the following method:
   1. First, determine the net buildable area of the site pursuant to 12.14.030(B)(3).
   2. Second, determine the total square footage of all enclosed and temperature controlled portions of the proposed, existing or any combination thereof of building(s) located on the subject parcel. Square footage within the building(s) dedicated for parking, parking garages, drive aisles, and interior recreation purposes consistent with 12.20.020 are exempt from the FAR ratio.
   3. Finally, divide the floor area by the net buildable site area using similar units of measure to derive at the floor area ratio.
   4. For example, a 10,000 square foot parcel within an activity center that requires a minimum FAR of 0.40, establishes that the minimum square footage of temperature controlled and enclosed building area must be at least 4,000 square feet.

B. Visual examples of FAR:



Draft - Figure 12.14-135-A



Draft - Figure 12.14.135-B

C. FAR Transference. Square footage of building used to satisfy the floor area ratio may be located anywhere within the subject property and may further be transferred across contiguous or non-continuous parcels provided the parcels are included as part of an overall development, the FAR transfer runs with the land in perpetuity, and transfer documents shall be recorded with the applicable County. This provision does not relieve an applicant from compliance with all other applicable provisions of the Code.

D. Mixed Use Developments. Where residential and non-residential uses are combined within one or more buildings on a single parcel or development area, the mix of minimum

residential density and non-residential floor area ratio shall be established within the subarea regulations.

*****No changes to 12.14.140 through 12.14.250*****

Section 10. BMC 12.26.050 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

12.26.050 Nonconforming structures and other improvements.

If, at the effective date of the ordinance codified in this title or any amendment thereto, a lawful structure or other improvement exists which is made no longer permissible under the terms of this title or amendment thereto, such structure or other improvement may be continued as a nonconforming structure or other improvement so long as it remains otherwise lawful, subject to the following conditions:

A. No nonconforming structure or other improvement shall be altered or changed in a way which increases its nonconformity.

B. Non-conforming structures in existence on or before [effective date of ordinance] which propose an increase in building area are exempt from complying with the floor area ratio required within the applicable subarea plan.

C. Upkeep, repairs and maintenance of a nonconforming structure or other improvement shall be permitted.

Section 11. BMC 12.30.030 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

12.30.030 Permissive modifications of regulations – Generally.

In considering a proposed planned unit development project, the approval thereof may involve modifications in the site development regulations, requirements and standards of this title, Zoning, and BMC Title 17, Transportation, as identified within this chapter. In modifying such regulations, requirements and standards as they may apply to a planned unit development project, the limitations set forth in this section shall apply to all PUDs. In order to be granted any such modifications, the applicant shall demonstrate that the proposed development complies with the purpose of this chapter as stated in BMC 12.30.010. The applicant shall bear the burden of supporting any change in requirements. The city may increase any requirement necessary to make the project conform to the purposes of this chapter.

A. Front Yard Setbacks. The requirements for minimum front yard setbacks for the zone in which the planned unit development is located shall apply to all exterior boundary lines of the site.

B. Distance between Buildings. The requirements for minimum side and rear yard setbacks may be modified; provided, that minimum distances required by the International Building Code and Fire Code shall be met.
C. Building Height. Building height and any corresponding setback requirements related to building height shall be governed by the requirements of the underlying zoning classification as set forth in Chapter 12.14 BMC or any applicable subarea regulation.
D. Minimum density and minimum floor area ratios in designated activity centers shall be governed by the requirements of the applicable subarea regulations wherein the development is located and shall not be modified.

Section 12. BMC 12.48 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

Chapter 12.48
CANYON PARK SUBAREA REGULATIONS

Sections:

12.48.010 Purpose.
12.48.020 R-AC, OP, CB zoning south of Filbert and Maltby roads.
12.48.030 R-AC, OP, CB zoning northeast of I-405 – R-AC, OP, LI zoning in central portion of subarea – R-AC, OP, LI zoning in west-central portion of subarea.
12.48.040 R-AC, OP, CB zoning in southwest corner of subarea.
12.48.050 R-AC, OP, CB, LI zoning in north central portion of the subarea.
12.48.060 Motor vehicle sales overlay. **– Not shown**

12.48.010 Purpose.

Subarea zoning regulations implement subarea-specific policies in the Imagine Bothell... Comprehensive Plan. The subarea zoning regulations in this chapter apply specifically to land within the Canyon Park Subarea. Subarea zoning regulations are in addition to city-wide zoning regulations or, where more restrictive, take the place of city-wide zoning regulations.

12.48.020 R-AC, OP, CB zoning south of Filbert and Maltby roads.

A. Buffers. Development shall provide a buffer adjacent to residential development to the east and west. Such a buffer may consist of the existing wetlands in the east and west borders of this area. See also subsection B of this section.
B. Building Height.
1. Maximum building height shall be 35 feet, but may be increased up to 65 feet if both of the following conditions are met:

a. At least 40 percent of the gross floor area of the average story within the building (total building gross floor area divided by the number of stories) is devoted to parking either within or under the building or within a separate parking structure;

b. At least 10 percent of the gross floor area of the average story within the building (total building gross floor area divided by number of stories) is devoted to externally oriented at-grade space for retail uses, eating and drinking establishments, recreation, culture and entertainment uses, personal services, and/or other similar businesses which are characterized by regular and frequent patronage during the course of the normal business day. "Externally oriented" for the purposes of this regulation shall mean having a door opening directly to the outside. This requirement may be reduced or waived by the community development director for individual buildings within multiple-building developments if it can be demonstrated to the satisfaction of the director that the total amount of the above-described space within the development would comprise at least as much space as the combined total of the minimum required amounts of such space for all of the individual buildings in the development.

2. When buildings exceed 35 feet, in accordance with subsection (B)(1) of this section, the mandatory setbacks from, and mandatory landscaping buffers adjacent to, any abutting R zoning (not including combination zones) shall be increased as follows:

a. The mandatory setbacks from any abutting R zoning, as set forth in BMC 12.14.070(D), shall be increased three feet horizontally for each foot of building height exceeding 35 feet. These increased setbacks shall apply to the entire building, rather than only to those portions of the building which may be higher than 35 feet. Where the property zoned OP, CB abuts R zoning along a street, the increased setbacks shall be measured from the street property line of the property zoned OP, CB.

b. The mandatory landscaping buffers adjacent to any abutting R zoning, as set forth in BMC 12.18.110, shall be increased 0.25 feet (three inches) for each foot of building height exceeding 35 feet, up to a maximum of 10 feet of additional landscaping. In such cases, the entire buffer shall consist of Type I landscaping.

3. Building height shall be measured as set forth in BMC 12.14.110 through 12.14.130.

C. Minimum residential density and minimum floor area ratio

1. Development proposing primarily residential uses shall achieve a minimum density of 35 dwelling units per net acre with the maximum density controlled by the site and building envelope regulations of this section.

2. Development proposing exclusively non-residential uses, shall achieve a minimum floor area ratio of 0.4.
3. Mixed use developments proposing both residential and non-residential uses shall:
   a. Achieve the minimum residential density, with the minimum non-residential floor area ratio being satisfied through compliance with 12.48.040(A)(1); or
   b. Achieve a minimum floor area ratio of [1.0]; or
   c. Either fully provide non-residential land uses at the minimum floor area ratio of 0.4, and then apply a reduced residential density, or fully provide the minimum residential density of 35 units per net acre and then provide non-residential land uses at a reduced floor area ratio.

12.48.030 R-AC, OP, CB zoning northeast of I-405 – R-AC, OP, LI zoning in central portion of subarea – R-AC, OP, LI zoning in west-central portion of subarea.

A. Access. Development having frontage on SR-527 shall incorporate internal access from property to property and shared driveways to minimize access points on SR-527.

B. Building Height. Maximum building height shall be 65 feet for buildings containing residential uses and 100 feet for buildings containing nonresidential uses, except that buildings may be up to 150 feet to accommodate manufacturing processes which require structures taller than 100 feet. In such cases, the applicant shall demonstrate why the process cannot be conducted in a building of 100 feet or less. Only that portion of the structure containing the manufacturing process may exceed 100 feet; offices and other areas of intensive employee activity are prohibited above this height.

When buildings exceed 35 feet, the mandatory setbacks from, and mandatory landscaping buffers adjacent to, any abutting R zoning (not including combination zones) shall be increased as follows:

1. The mandatory setbacks from any abutting R zoning, as set forth in BMC 12.14.070(D), shall be increased three feet horizontally for each foot of building height exceeding 35 feet. These increased setbacks shall apply to the entire building, rather than only to those portions of the building which may be higher than 35 feet. Where the property zoned R-AC, OP, CB; R-AC, OP, LI; or R-AC, OP, LI abuts R zoning along a street, the increased setbacks shall be measured from the street property line of the property zoned R-AC, OP, CB; R-AC, OP, LI; or R-AC, OP, LI. Building height shall be measured as set forth in BMC 12.14.110 through 12.14.130.
2. The mandatory landscaping buffers adjacent to any abutting R zoning, as set forth in BMC 12.18.110, shall be increased 0.25 feet (three inches) for each foot of building height exceeding 35 feet, up to a maximum of 10 feet of additional landscaping. In such cases, the entire buffer shall consist of Type I landscaping.

C. Minimum residential density and minimum floor area ratio

1. Development proposing primarily residential uses shall achieve a minimum density of 35 dwelling units per net acre with a maximum density controlled by the site and building envelope regulations of this section.
2. Non-residential development shall achieve a minimum floor area ratio of 0.4.
3. Mixed use developments proposing both residential and non-residential uses shall:
   a. Achieve a minimum floor area ratio of 1.0; or
   b. At the applicant's discretion, either fully provide non-residential land uses at the minimum floor area ratio of 0.4, and then apply a reduced residential density, or fully provide the minimum residential density of 35 units per net acre and then provide non-residential land uses at a reduced floor area ratio.

12.48.040 R-AC, OP, CB zoning in southwest corner of subarea.

A. Building Height.

1. Maximum building height shall be 35 feet, but may be increased to 65 feet if both of the following conditions are met:

   a. At least 40 percent of the gross floor area of the average story within the building (total building gross floor area divided by the number of stories) is devoted to parking either within or under the building or within a separate parking structure;

   b. At least 10 percent of the gross floor area of the average story within the building (total building gross floor area divided by number of stories) is devoted to externally oriented at-grade space for retail uses, eating and drinking establishments, recreation, culture and entertainment uses, personal services, and/or other similar businesses which are characterized by regular and frequent patronage during the course of the normal business day. "Externally oriented" for the purposes of this regulation shall mean having a door opening directly to the outside. This requirement may be reduced or waived by the community development director for individual buildings within multiple-building developments if it can be demonstrated to the satisfaction of the director that the total amount of the above-described space within the development would comprise at least as much space as the combined total of the minimum required amounts of such space for all of the individual buildings in the development.

2. When buildings exceed 35 feet, in accordance with subsection (A)(1) of this section, the mandatory setbacks from, and mandatory landscaping buffers adjacent to, any abutting R zoning (not including combination zones) shall be increased as follows:

   a. The mandatory setbacks from any abutting R zoning, as set forth in BMC 12.14.070(D), shall be increased three feet horizontally for each foot of building height exceeding 35 feet. These increased setbacks shall apply to the entire building, rather than only to those portions of the building which may be higher than 35 feet. Where the property zoned R-AC, OP, CB abuts R zoning along a street, the increased setbacks shall be measured from the street property line of the property zoned R-AC, OP, CB.

b. The mandatory landscaping buffers adjacent to any abutting R zoning, as set forth in BMC 12.18.110, shall be increased 0.25 feet (three inches) for each foot of building height exceeding 35 feet, up to a maximum of 10 feet of additional landscaping. In such cases, the entire buffer shall consist of Type I landscaping.

B. Minimum residential density and minimum floor area ratio

1. Development proposing primarily residential uses shall achieve a minimum density of 35 dwelling units per net acre with the maximum density controlled by the site and building envelope regulations of this section.
2. Development proposing exclusively non-residential uses, shall achieve a minimum floor area ratio of 0.4.
3. Mixed use developments proposing both residential and non-residential uses shall:
   a. Achieve the minimum residential density, with the minimum non-residential floor area ratio being satisfied through compliance with 12.48.040(A)(1); or
   b. Achieve a minimum floor area ratio of 1.0; or
   c. At the applicant's discretion, either fully provide non-residential land uses at the minimum floor area ratio of 0.4, and then apply a reduced residential density, or fully provide the minimum residential density of 35 units per net acre and then provide non-residential land uses at a reduced floor area ratio.

12.48.050 R-AC, OP, CB, LI zoning in north central portion of the subarea.

A. Within this designation, any development proposing to implement any of the uses permitted under the Community Business zone are subject to the following special regulations:

1. All applications proposing to implement the uses permitted under the Residential-Activity Center and Community Business zoning designation shall be subject to this code including critical areas, site and building design and landscaping regulations.
2. Properties located within the R-AC, OP, CB, LI zoning designation shall provide for site-to-site vehicle access ways to allow vehicles and pedestrians a smooth flow of traffic across consecutive adjoining properties without the need to use a street. Said access may comprise the aisle between rows of parking stalls.
3. All properties hosting the uses allowed under the Community Business (CB) zone shall be prohibited from creating any connection to the public rights-of-way of 23rd Avenue and 211th Street South East.

B. Building Height. Maximum building height shall be 65 feet for buildings containing residential uses and 100 feet for buildings containing nonresidential uses, except that buildings may be up to 150 feet to accommodate manufacturing processes which require structures taller than 100 feet. In such cases, the applicant shall demonstrate why the process cannot be conducted in a building of 100 feet or less. Only that portion of the structure containing the manufacturing process may exceed 100 feet; offices and other areas of intensive employee activity are prohibited above this height.

When buildings exceed 35 feet, the mandatory setbacks from, and mandatory landscaping buffers adjacent to, any abutting R zoning (not including combination zones) shall be increased as follows:

1. The mandatory setbacks from any abutting R zoning, as set forth in BMC 12.14.070(D), shall be increased three feet horizontally for each foot of building height exceeding 35 feet. These increased setbacks shall apply to the entire building, rather than only to those portions of the building which may be higher than 35 feet. Where the property zoned OP, CB, LI abuts R zoning along a street, the increased setbacks shall be measured from the street property line of the property zoned OP, CB, LI. Building height shall be measured as set forth in BMC 12.14.110 through 12.14.130.

2. The mandatory landscaping buffers adjacent to any abutting R zoning, as set forth in BMC 12.18.110, shall be increased 0.25 feet (three inches) for each foot of building height exceeding 35 feet, up to a maximum of 10 feet of additional landscaping. In such cases, the entire buffer shall consist of Type I landscaping.

C. Minimum residential density and minimum floor area ratio

1. Residential development shall achieve a minimum density of 35 dwelling units per net acre and a maximum density controlled by the site and building envelope regulations of this section.

2. Non-residential development shall achieve a minimum floor area ratio of 0.4.

3. Mixed use developments proposing both residential and non-residential uses shall:

a. Achieve a floor area ratio of 1.0; or

b. At the applicant's discretion, either fully provide non-residential land uses at the minimum floor area ratio of 0.4, and then apply a reduced residential density, or fully provide the minimum residential density of 35 units per net acre and then provide non-residential land uses at a reduced floor area ratio.

*****No changes to 12.48.060 Motor Vehicle sales overlay******

Section 13. BMC 12.56 is hereby amended as follows, with new text shown by underline and deleted text and graphics shown in ~~strikethrough~~; all other provisions of this section shall remain unchanged and in full force:

Chapter 12.56
NORTH CREEK/NE 195TH STREET SUBAREA REGULATIONS

Sections:

12.56.010 Purpose.
12.56.020 North Creek Valley special district – Coterminous with North Creek Valley/NE 195th Street subarea.
12.56.030 Subdistricts.
12.56.040 *Repealed.*
12.56.050 Impervious and hard surface planning allotment.
12.56.060 Pedestrian and bicycle access.
12.56.070 Standards relating to freeways.
12.56.080 Architectural standards, minimum densities and floor area ratios.
12.56.090 Setbacks.
12.56.100 Landscaping standards.
12.56.110 Parking standards.
12.56.120 Nonemergency motor vehicle connections from 112th Avenue NE to roads in Maywood/Beckstrom Hill Subarea prohibited.
12.56.130 Motor Vehicle Sales Overlay.

*****No changes to 12.56.010 through 12.56.070*****

12.56.080 Architectural standards, minimum densities and floor area ratios.
In order to further the purposes of this chapter as set forth in BMC 12.56.010, protect property values, minimize discordant and unsightly surroundings and visual blight, avoid inappropriate and poor quality design and to promote aesthetic quality for the community as a whole, in addition to the design standards contained in Chapter 12.14 BMC, the following architectural standards shall be complied with:

A. Glare.

1. Mirror glass is permitted only when it can be demonstrated to produce no detrimental visual effect upon adjacent areas.

2. Lighting shall be directed toward the interior of the project and away from residential areas.

B. The major portions of the exterior building and fence materials shall be of natural and earth tones. Accent colors will be permitted on the minor portions of such materials.

C. Buildings should be designed to encourage overall compatibility. Modular units, tilt-up construction, and other cost-effective techniques are allowed and the final visual effect should be one of quality and permanence.

D. All vents, air conditioning units, mechanical, electrical and other equipment located on the roof of any structure shall be screened as needed to avoid an unsightly appearance as viewed from surrounding property, including hillside locations. The building roof design and covering/screening materials shall be described in detail, and it shall be demonstrated how these items will mitigate the visual impact of the equipment. These items shall be incorporated as an integral part of the overall building design.

Projections of the view to the proposed site development, of roofs, and of rooftop equipment screening from adjacent hillsides, elevated roadways and residential areas shall be submitted.

E. Building Height.

1. The following special height regulations apply:

a. Within the portion of Subdistrict A zoned R-AC, OP, CB, LI, the maximum allowable height is 100 feet, except that buildings may be up to 150 feet to accommodate manufacturing processes which require structures taller than 100 feet. In such cases, the applicant shall demonstrate why the process cannot be conducted in a building of 100 feet or less. Only that portion of the structure containing the manufacturing process may exceed 100 feet; offices and other areas of intensive employee activity are prohibited above this height.

b. Within the portion of Subdistrict A zoned R 2,800, OP, NB; and R-AC, OP, CB, LI, MVSO the maximum allowable height is 65 feet.

c. Within the portion of Subdistrict B east of 120th Avenue NE and 39th Avenue SE zoned R 2,800, OP, the maximum allowable height is 65 feet.

d. Building heights within the remainder of Subdistricts A and B shall be regulated in accordance with Chapter 12.14 BMC.

e. Building height shall be measured as set forth in BMC 12.14.110 through 12.14.130.

2. When buildings exceed 35 feet, in accordance with subsection (E)(1) of this section, the mandatory setbacks from, and mandatory landscaping buffers adjacent to, any abutting R zoning (not including combination zones) shall be increased as follows:

a. The mandatory setbacks from any abutting R zoning, as set forth in BMC 12.14.070(D), shall be increased three feet horizontally for each foot of building height exceeding 35 feet. These increased setbacks shall apply to the entire building, rather than only to those portions of the building which may be higher than 35 feet. Where a property within any area described in subsection (E)(1)(a), (b), (c) or (d) of this section abuts R zoning along a street, the increased setbacks shall be measured from the street property line of such property.

b. The mandatory landscaping buffers adjacent to any abutting R zoning, as set forth in BMC 12.18.110, shall be increased 0.25 feet (three inches) for each foot of building height exceeding 35 feet, up to a maximum of 10 feet of additional landscaping. In such cases, the entire buffer shall consist of Type I landscaping.

F. Minimum residential density and minimum floor area ratio

1. Residential development shall achieve a minimum density of 35 dwelling units per net acre and a maximum density controlled by the site, building envelope, parking, recreation space, and other applicable regulations of this Title.

2. Non-residential development shall achieve a minimum floor area ratio of 0.4.

3. Mixed use developments proposing both residential and non-residential uses shall:
   a. Achieve a minimum floor area ratio of 1.0; or
   b. At the applicant's discretion, either fully provide non-residential land uses at the minimum floor area ratio of 0.4, and then apply a reduced residential density, or fully provide the minimum residential density of 35 units per net acre and then provide non-residential land uses at a reduced floor area ratio.

***** No changes to 12.56.090 through 12.56.130 *****

Section 14. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 15. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect thirty (30) days after the later of passage, signature by the Mayor in accordance with the Council's directive, and publication of an approved summary thereof consisting of the title.

Section 16. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

APPROVED:

_____
ANDREW J. RHEAUME
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

On the 3rd day of September, 2019, the City Council of the City of Bothell passed Ordinance No. _____(2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE IMAGINE BOTHELL… COMPREHENSIVE PLAN CAPITAL FACILIITES ELEMENT, LAND USE ELEMENT, CANYON PARK AND NORTH CREEK / NE 195 ST SUBAREA PLANS AND TITLES 11 ADMINISTRATION OF DEVELOPMENT REGULATIONS AND TITLE 12 ZONING REGARDING THE PUBLIC SAFETY BOND AND MINIMUM DENSITY AND INTENSITY PLAN AND CODE AMENDMENTS.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

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Proposed Code Amendments Regarding 2019 Comprehensive Plan and Code amendments

Planning Commission Findings, Conclusions and Recommendation

Findings

1. **History.** The Capital Facilities Element amendments were initiated by City Council on February 19, 2019 as part of the 2019 Docket of Plan and Code Amendments. The minimum density and intensity Plan and Code amendments were initiated by Council June 18, 2019.

2. **Geographic Location.** The proposed 2019 Plan and Code amendments apply to the Canyon Park and North Creek / NE 195 ST activity centers and Fire Stations 42 and 45.

3. **Proposed Action.** The proposed Plan and Code amendments would implement:
   A. Minimum residential densities and minimum floor area ratios within the City's activity centers
   B. Update the Capital Facilities Element of the *Imagine Bothell…* Comprehensive Plan to reflect the results of the public safety bond and the reconstruction of Fire Stations 42 (Downtown) and 45 (Canyon Park).

4. **Public Meetings.** The Planning Commission held Study Sessions on the proposed Plan and Code amendments on May 1, 2019 and September 4, 2019 and a public hearing November 6, 2019.

5. **Public Notice.** Public notice for the proposed code amendments was provided through the following methods:

   a. *Imagine Bothell...* notice. The City of Bothell provides a monthly notice to citizens, interested parties and news media describing upcoming meetings and hearings and the topics of those meetings. This notice is provided at the end of the month for the subsequent month's hearing schedule. The *Imagine Bothell…* notice also contains contact information.

      Notice of the public meeting dates for the proposed code amendment was published in the May, September, October, and November 2019 editions of the *Imagine Bothell…* notice.

   b. The *Imagine Bothell...* notice is sent via e-mail and/or regular U.S. Postal Service mail to all parties who have signed up for the service.

   c. The *Imagine Bothell...* notice is published in the City's Newspaper of Record.

d. The *Imagine Bothell...* notice is also posted on the City's web page at www.ci.bothell.wa.us.

e. The City maintains a number of public notice boards which are placed throughout the City at certain accessible and visible locations. Each of these notice boards contains a plastic box where extra copies of the *Imagine Bothell...* notice are stored and are available for retrieval by any interested citizen. These boxes are filled with paper copies of the notice each month.

f. The *Imagine Bothell…* notice is also publicly posted at City Hall, and the Municipal Court Building.

g. Emails inviting participation were sent to Owner's association contacts of the Canyon Park Business Center, Bothell - Business Center, Schnitzer West Business Park, and Monte Villa Business Park

Findings regarding Minimum Density and Intensity Plan and Code amendments

6. Purpose of this amendment
   The purpose of this amendment is to ensure the City provides sufficient residential and employment capacity to satisfy its assigned growth targets. Recent development applications, have proposed population and employment densities that are well below levels planned for within the *Imagine Bothell…* Comprehensive plan and as predicted by the King County and Snohomish County Buildable Lands Reports.

7. Scope of this amendment
   The Canyon Park and North Creek / NE 195 ST Subareas are the focus of these amendments because those are where the development pressures are being applied and are most in need of this action. Other Subareas, including Brickyard Road / Queensgate and Country Village/Bothell-Everett Highway/Lake Pleasant are virtually built-out and are not experiencing the activity of Canyon Park and North Creek. Regarding the Thrasher's Corner/Redhawk and Filbert/Winesap Subareas they are fully within unincorporated Snohomish County and are not subject to City of Bothell regulations.

8. The R-AC zone is applied to specific activity centers and is an important component to meeting the City's assigned growth targets.

9. The R-AC is described in Land Use Element Policy LU-P4 as:
   "Residential – Activity Center
   This designation shall provide for multi-family residential development in designated activity centers, and is intended to promote a variety of housing types in sufficient numbers to support a range of shopping, dining and entertainment opportunities within those centers. *No specific density is prescribed*: the number of units which may be constructed on an individual property or within the center

shall be controlled by site and building regulations concerning height, parking, landscaping, setbacks and other aspects of development." (*Emphasis added*)

10. The R-AC zone accommodates large amounts of population growth and is one strategy protecting the City's established residential neighborhoods as supported by Comprehensive Plan Policy LU-P6, which states:

    "Preserve the character of established neighborhoods and protect such neighborhoods from intrusion by incompatible uses."

    Further, Land Use Policy LU-P17 identifies:

    "If, as a result of the periodic review and evaluation required by RCW 36.70A.215 (also known as the Buildable Lands review), it is demonstrated that this Plan and implementing development regulations are not achieving the goals of the Growth Management Act, identify and implement measures that are reasonably likely to promote consistency with the Act through the Comprehensive Plan update process."

11. R-AC is *always* applied as a combination zone which allows for a single use or a mixture of land uses. For example, an R-AC, OP, CB zoned parcel permits any combination of residential, office professional or retail use or an applicant may choose any use consistent with any of the zoning classifications. Further, combination zones allow an applicant to select the most permissive standard of each individual zone. See 12.06.020(F).

12. There are seven R-AC zoning combinations:
    - R-AC, OP, LI
    - R-AC, OP, NB
    - R-AC, OP, NB, LI
    - R-AC, OP, CB
    - R-AC, OP, CB, LI
    - R-AC, OP, CB, MVSO
    - R-AC, OP, CB, LI, MVSO

13. Of the seven zoning combinations, one zone *always* appears with R-AC. Office Professional (OP) which is described as:

    "Office-Professional (OP).
    This designation shall include personal and professional service businesses which commonly locate in office buildings, such as banks, medical and dental clinics, accounting, law, real estate, insurance, travel agencies and similar businesses."

    The other two zoning classifications that are most commonly associated with R-AC include Light Industrial (LI) and Community Business (CB) described as:

    "Light Industrial (LI).
    This designation comprises non-polluting manufacturing and processing, wholesaling, warehousing and distribution and other similar activities. Such uses tend to require large buildings and to generate more large truck traffic than do other types of land uses."

Community Business (CB).
This designation comprises most retail, dining, entertainment and similar businesses which are conducted primarily indoors. Such uses include but are not limited to grocery stores, drug stores, furniture stores, clothing stores, book stores, music stores, restaurants, movie theaters, and bowling alleys.

14. Residential density. The City of Bothell has a range of residential densities ranging from the R 40,000 zone of 1 lot per acre (R 40,000) to the R-AC zone which has no maximum and allows density to be controlled by site and building standards such as building height, parking, setbacks, etc.

Table - Residential Densities City of Bothell

Zoning Classification	Square footage per unit[1]	Maximum Units per acre equivalent[2]	Minimum units per acre[3]
R 40,000	40,000	1.09	0.72
R 9,600	9,600	4.53	3.02
R 8,400	8,400	5.18	3.45
R 7,200	7,200	6.05	4.03
R 5,400	5,400	8.07	5.38
R 4,000	4,000	10.89	7.26
R 2,800	2,800	15.55	10.33
R-AC	None	None	N/A

1. The City uses square footage to determine density
2. This figure is shown as units per acre for ease of numbering
3. The City controls minimum density by capping lot area to no greater than 150% of the minimum lot or unit area.

15. There is a noticeable 'gap' between the R 2,800 zone which allows approximately 15 units per acre and the R-AC zone which does not have a specific maximum or minimum. However, minimum residential densities to all other residential zones. BMC 12.14.030(B)(2)(c) and 3(b) establish minimum densities equal to no fewer than 1.5 times the underlying lot area or dwelling unit per acre maximums.

16. Historically, R-AC developments have achieved 50 to 80 dwelling units per acre (DU/AC). However, recent developments have proposed townhomes within the R-AC zone that are achieving less than 20 dwelling units per acre. This lesser dwelling unit count could have an effect upon the City's future buildable lands growth projections and the City's ability to meet its growth target responsibilities.

The following table demonstrates this trend

Table - Completed and Proposed R-AC developments:

Name	Year	Units	Land area	Units per acre
Emerald Crest	2017	53	0.61 ac	87

Name	Year	Units	Land area	Units per acre
Beardslee Village	2016	372	5.61 ac	63
Urbane Village[1]	2018	212	11.6 ac	18
Tract 18 & 19 townhomes (approved)	2018	118	6.93 ac	17
Tract 24 townhomes (in review)	2018	231	12.43 ac	19
Preston North	2019	94	5.0 ac	19
Preston South	2019	59	7.2 ac	8
Canyon Park apartments (pre-application only)[2]	2018	531	9.8	54
Quadrant /Seattle Times[2]	2019	880	23.75	37

Townhomes may be a desirable housing product, but this housing type does not achieve the potential capacity established for the R-AC zone. As demonstrated within the 2014 King County Buildable Lands Report, the R-AC has a capacity of 3,286 dwelling units (+6,210 residents) within 55 vacant or re-developable R-AC lands. This equates to approximately 60 dwelling units per acre.

Should this trend of lesser densities continue, the City will not be achieving its calculated housing capacity which is cause for concern because the City is heavily reliant on the R-AC zone to accommodate a substantial amount of the City's 2035 population growth target as well as the City's overall growth strategy.

17. Policy Considerations

In its deliberations, the Planning Commission considered the following policy considerations:

- What should be the minimum level of development (i.e., density and FARs) in each activity center?
- Should the City apply an FAR range based upon the proposed land use? For example, should a non-residential office building have a different FAR than a mixed-use development containing both residential and non-residential uses?
- Should the City simply assign a single FAR and allow the market to determine how to fill the building? For example, an FAR of 2.0 could contain either residential or non-residential uses and would likely meet the minimums.
- Should flexibility be crafted into the regulations which allow an applicant to propose custom minimums as long as the overall development achieves the minimums? For example, is it acceptable for a development to primarily be an 'office' building with a small amount of residential use, or vice versa, as long as either the FAR or the minimum residential density is achieved? This approach is detailed on page 9 of this memorandum?

18. Concepts considered – Residential densities.

Because each activity area has unique features, and characteristics the Commission started its investigation of options by individual subarea. Below are findings for each subarea.

<u>Canyon Park Subarea</u>

Portions of Canyon Park are designated a regional growth center (RGC) and must meet the Puget Sound Regional Council's framework criteria for minimum levels of existing (18) and planned (45) activity units (AU). An AU is either one resident or one employee.

To convert activity units into dwelling units per acre requires using a persons per household (PPH) figure be applied to the activity unit criteria which can then be projected into residential densities. PPH figures are derived from three sources and range from 1.54 for multi-family to 2.89 for single family.

To be conservative, a multi-family PPH of 1.54 PPH is used meaning achieving a 45 AU/acre requires a minimum density of 30 dwelling units per acre (45 ÷1.54 = 29.22). Staff recommends a small 'contingency' be added resulting in a minimum density of 35 units per acre which also encourages building sizes and scales that are compatible with the rest of the Canyon Park.

Some locations within the Canyon Park Subarea require any building taller than 35 feet provide 40% of the average story within the building to be dedicated as structured parking plus at least 10% of the gross floor area of the average story be dedicated to externally oriented at-grade retail, office, or other service uses. The Planning Commission Recommendation proposes mixed use developments achieve the minimum residential density of 35 dwelling units per acre **plus** meet the structured parking and retail provisions described above or achieve an FAR of 1.0. The purpose of this approach is to require that primarily residential mixed use developments provide space to accommodate retail and other services for residents and employees within the subarea.

The Planning Commission also deliberated on and is recommending an approach that would provide an applicant flexibility in applying the minimum density/intensity requirements. The proposal is to allow an applicant the discretion of meeting either the minimum density **or** the minimum non-residential FAR and then complete the remainder of the development with other land uses as the applicant deems appropriate given market demand. Accordingly, after a mixed use development achieved either the minimum floor area ratio of 0.5 **or** the minimum residential density of 35 units per net acre the applicant would then have the discretion of applying reduced residential densities or reduced non-residential floor area ratios to the balance of the development.

North Creek / NE 195th ST Subarea

The North Creek Subarea contains three separate business parks but is not an RGC meaning the City has more options in establishing a minimum density. However, King County buildable lands assumes a residential density of 50 to 80 units per acre for the R-AC zone.

Planning Commission deliberated upon two viable minimum density alternatives:

1) Establish 35 dwelling units per acre (DU/ac) as the minimum density similar to that proposed for Canyon Park. A density of 35 dwelling units per acre does not achieve the 50 to 80 dwelling units assumed in the King County buildable lands nor does it match past R-AC developments of 63 to 87 DU/ac but is consistent with a preliminary residential development proposed for the Seattle Times property which achieves 37 DU/ac. Finally

Staff has explained it is their observation that most developments seek densities that are more than the minimums; or

2) Establish a minimum density of 50 DU/ac to match King County buildable lands assumptions and to achieve similar densities as previous R-AC developments. A 50 DU/ac minimum requires a different style of development that may be at a scale that is different than the existing development pattern in the Subarea.

The Planning Commission deliberated on the above approaches and determined that a 35 dwelling unit per acre assignment for the North Creek / NE 195th St Subarea was the most appropriate density because it matches that established for the Canyon Park Subarea thereby avoiding the confusion of having two different minimum density amounts and it is generally easier to increase a minimum density than it is to decrease one if, in the future, it is determined that an increase in the minimum density is necessary.

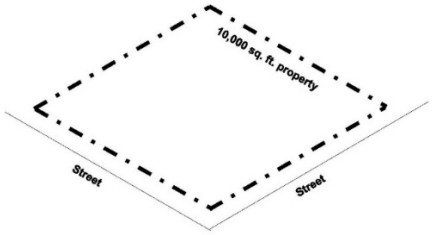
19. Recommended minimum residential densities
The Planning Commission is recommending the following minimum residential densities within the following activity centers.

Subarea	**Dwelling units per acre *minimums***
Canyon Park	35
North Creek /NE 195 ST	35

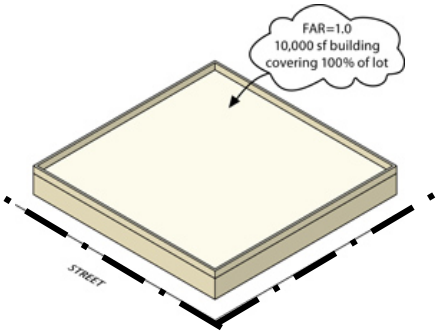
20. Concepts considered – Floor Area Ratios.
Employment density needs a different approach because a minimum employment density is not currently found within the BMC. This is a somewhat problematic endeavor because the number of employees per acre is dependent upon many outside influences such as the selected land use, the square footage of the building (which can be controlled) and the availability of tenants or end-users for the building. For example, manufacturing may have one employee per 300 sq. ft. where office may have one employee per 150 square feet. A building can be quite large but still have a low number of employees.

However, the intent with these amendments is to create capacity for employment which is best achieved through the implementation of *Floor area ratios (FAR)*. An FAR is a mechanism that ties the size of the building to the size of the lot upon which it is located. For example, an FAR of 0.25 means that the building square footage must be at least 25% of the property square footage or for 10,000 sq. ft. property, any building constructed upon that property must be at least 2,500 sq. ft.

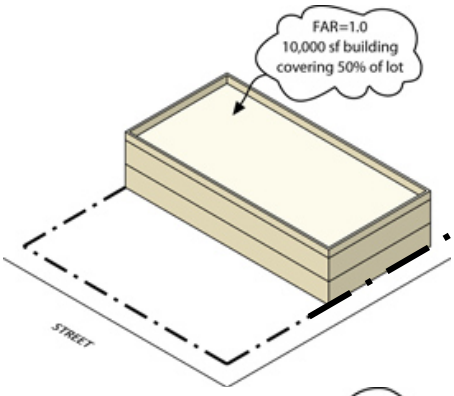
The illustrations below are from the City of Redmond's Zoning regulations:



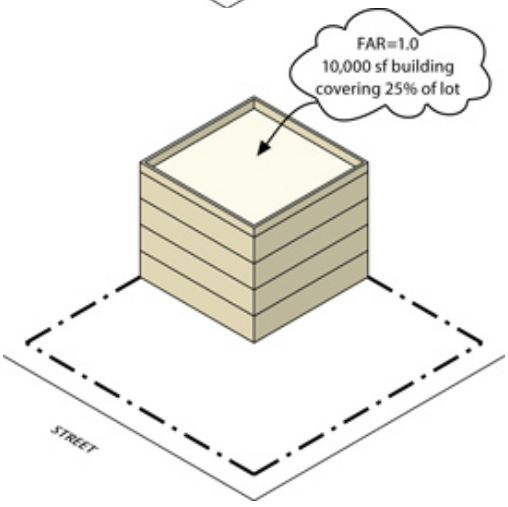
10,000 sq. ft. property



FAR = 1.0 means the 10,000 sq. ft. property must have a 10,000 sq. ft. building.
For this example, a single story 10,000 sq. ft. building occupies 100% of the property area



Different building configurations are allowed as long as the FAR = 1.0.
This example shows a two story 10,000 sq. ft. building configuration (5,000 sq., ft. per story) means 50% of the lot is available for parking or other uses



In this example, a 4 story building configuration (2,500 sq. ft. per story) is used to meet the FAR of 1.0 leaving 75% of the lot is available for parking or other uses

Many jurisdictions within the Puget Sound Region employ floor area ratios (FAR) to achieve both minimum and maximum building sizes, bulk and scale. For example, the City of Redmond is a good example with lengthy experience applying FARs within its zoning code. Redmond establishes FAR by individual zoning classifications and has characteristics similar to Bothell. Within Redmond's 'Business Park' zone, a minimum FAR of 0.60, a base

FAR of 1.13 and a maximum FAR of 2.0 are applied. “Base FAR” is the amount of development allowed outright without using a bonus or incentive to increase the FAR to the maximum allowed. Within its manufacturing park zone the base FAR is 0.25 to 0.50, depending upon the land use, and the maximum FAR is 1.00. Through incentives (e.g. transfer of development rights, affordable housing) an applicant may increase the FAR by certain specified amounts which are too detailed to list here.

To determine historic FAR trends, existing buildings within the Canyon Park Business Center, the North Creek Business Park and Brickyard Road were analyzed. Ten properties from each area were selected covering a range of building sizes and parcel areas.

Table - Canyon Park existing building floor area ratios – Ten commercial buildings

Address	Land area	Building area	Built - FAR
22118 20 Ave SE	675,180	177,300	0.26
1909 214 ST SE	255,697	86,148	0.33
22029 220 ST SE	140,698	50,425	0.36
21919 20 Ave	703,929.	266,002	0.38
2222 229 ST SE	75,794	31,809	0.41
2500 2530 223 ST SE	255.,261	110,700	0.43
2222 222 ST SE	169,884	74,750	0.44
22116 23 DR SE	40,510	17,995	0.44
22105 23 DR SE	199,940	91,704	0.45
2300 223 ST SE	195,148	93,404	0.47
22032 220 ST	42,253	21,749	0.51
21540 30 Ave SE	270,072	149,497	0.55
Average FAR			**0.413**
Median FAR			**0.425**

Table - North Creek existing building floor area ratios – Ten commercial buildings

Address	Land area	Building area	Built - FAR
19204 N Crk Pkwy	293,085	95,543	0.32
19201 120 Ave NE	186,745	59,475	0.32
18911 N Crk Pkwy	553,647	200,096	0.36
20021 120 Ave NE	156,794	58,324	0.37
19515 N Crk Pkwy N	95,328	35,275	0.37
19333 N Crk Pkwy	222,196	92,461	0.41
19909 120 Ave NE	161,588	68,129	0.42
19803 N Crk Pkwy N	73,476	31,069	0.42
11714 N Crk Pkwy N	93,186	40,475	0.43
20307 N Crk Pkwy	354,298	156,349	0.44
Average FAR			**0.386**
Median			**0.375**

To establish employment density, square foot per employee measurements were sought to guide the amount of building area necessary to achieve a desired employment density. Most sources agree with the following table.

Table - building square feet per employee

Employment type	Square feet per employee
General office	150
Microbiological and immunological	163
Upper management	280
Senior Professional	115
Technical / Professional	90
Precision Manufacturing	300
Senior Clerical	85
Warehousing	5,000

Based upon the information above, except for warehousing and manufacturing, even a relatively small building (e.g. 10,000) can accommodate 45 or more employees per acre. The challenge is to establish an FAR that provides the type of capacity necessary to house future employees at numbers that support employment growth. That means establishing an FAR that is greater than current building stock, but does not exceed market realities.

21. Analyzing Floor area ratios
Fortunately, development proposals have been submitted to the City which are instructive in establishing an appropriate FAR.

Downtown Developments
The Downtown Subarea contains mixed-use developments where residential is the primary use and occupies the majority of the floor area of the development. This is the model upon which the flexible threshold approach is based.

Downtown Buildings

Development	Net Land area	Net Building area	Actual FAR	Achieved Density
Six Oaks	170,500	83,537	4.42	106
The Merc	23,040	85,532	3.71	230
Boulevard Place	194,390	66,044	3.12	192
Edition	120,522	41,004	2.93	135
Junction	179,465	67,878	2.64	83
Pop North	45,763	104,407	2.28	116
104 Apts	58,059	88,141	1.52	86
Average FAR			**2.95**	**135**
Median FAR			**2.93**	**116**

Downtown Townhome residential developments

Development	Net Land area	Net Building area	Built - FAR	Achieved Density
Dawson Square	93,330	92,632	1.00	21
The Landing	102,080	93,649	1.10	27
Average FAR			**1.05**	**24**

Canyon Park – Submitted but not constructed non-residential development proposals

Development	Net Land area	Net Building area	Proposed FAR
Woodlands Tech	426,888	621,798	1.45
Tract 18 and 19 - office	301,991	126,730	0.42
Average FAR			**0.93**

Canyon Park – Submitted residential development proposals

Development	**Net Land area**	**Net Building area***	**Proposed FAR**
Tract 24 townhomes	426,888	348,810	0.45
Tract 18 & 19 townhomes	301,991	178,180	0.42
Canyon Park Apts	426,888	498,441	1.16
Average FAR			**0.49**
Median FAR			**0.42**

*Estimate

The proposals above vary on the amount of FAR but it is clear that even townhome developments (two within Downtown) can achieve an FAR of 1.0 and that one previous office proposal in Canyon Park would have achieved an FAR of 1.45. It should also be noted that both previous non-residential proposals in Canyon Park were not developed and have recently been submitted for townhome development proposals with FARs of 0.45 and 0.42.

22. Other Jurisdiction FARs for similar zoning classifications
A brief analysis of other jurisdictions' FAR minimums was conducted. There are many nuances in how different jurisdictions apply minimum FAR and each jurisdiction weighs these minimums with regard to their unique growth strategies, land use needs, land economics and the development pattern the jurisdiction is trying to achieve. However, a few instructive examples were found.

Table - Jurisdiction FARs

Jurisdiction	Zone category	Minimum FAR
Redmond		
	Business Park	0.6
	Manufacturing	0.25 to 0.5
Bellevue		
		0.5 FAR lower than 0.5 require square footage reductions
Kirkland		
	Totem Lake TL1 mixed use zone	1.0 Office uses
Seattle		
	Commercial	1.5 30 foot building height 2.0 50 foot building height

23. Findings regarding application of minimum densities and Floor Area Ratios
- A minimum density of 35 dwelling units per acre achieves 45 'Activity Units' per acre.
- Even relatively lower densities can have relatively high FARs. For example, four townhome projects only achieve densities of 18 to 27 units/acre but have FARs ranging from 0.70 to 1.10.
- Even higher residential densities can have relatively low FARs. For example, two developments, Canyon Park Apartments and Beardslee Village, achieve densities of 54 and 64 units/acre with FARs of 1.16 and 1.18, respectively.

- Dwelling unit size plays an important role because townhome square footages range from 1,510 to 2,287 whereas more traditional multi-family development square footages range from 700 to 900 square feet.
- Downtown mixed-use developments achieve fairly high densities (average 116 DU/acre) but also have relatively high FARs (average 2.9).
- Requiring a minimum FAR of 1.0 for mixed use developments, appears to be the best option for achieving appropriate minimums while not implementing a standard that discourages mixed use proposals.

24. Recommended minimums
    - Minimum residential densities for exclusively residential developments.
    - Minimum floor area ratios for non-residential developments.
    - Establish three approaches for mixed-use developments within Canyon Park:
        - Apply the minimum residential density plus provide for 40% of the average floor area for structured parking and 10% of the average floor area for retail, office and other service uses; or
        - Apply a minimum floor area ratio of 1.0; or
        - Apply a flexible threshold that gives mixed use developments the discretion to achieve either the minimum density or the minimum non-residential floor area ratio and then 'fill-in' the rest of the development either residential or non-residential land uses based upon market need.
    - Mixed-use developments within North Creek / NE 195 ST would achieve a minimum floor area ratio of 1.0 or grant an applicant the discretion to comply with either the minimum residential density or the minimum non-residential FAR and then fill-in the remainder of the development with reduced densities and FARs.

    Some portions of the Canyon Park Subarea require buildings taller than 35 feet to provide 40% of the gross floor area of the average story within the building to be dedicated as structured parking, plus at least 10% of the gross floor area of the average story to be externally oriented at-grade retail, office, or other services uses.

    In one portion of the Canyon Park subarea, the proposal would require mixed use development to meet its minimum residential density requirement PLUS be consistent with the requirement to provide structured parking and externally oriented retail/services uses as described above. Or, an applicant may select to simply achieve a minimum FAR of 1.0. The choice is left to the applicant.

    The North Creek / NE 195 ST Subarea does not have the structured parking and retail/service externally oriented use requirement. Accordingly, any mixed-use development would be required to achieve an FAR of 1.0 or apply the flexible threshold granting an applicant the discretion to comply with either the minimum residential density or the minimum non-residential FAR and then fill-in the remainder of the development with reduced densities and FARs.

Table – Planning Commission Recommendation by Subarea

Subarea	Minimum residential density DU/acre	Minimum FAR for non-residential	Minimums Mixed Use Option 1	Minimums Mixed Use Option 2	Minimums Mixed use Option 3
Canyon Park	35	0.50	Min DU/ac plus structured parking and 10% retail	1.0 FAR	Meet either min DU/ac or min FAR Fill-in with the other land use
North Creek /NE 195 ST	35	0.50	N/A	1.0 FAR	Meet either min DU/ac or min FAR Fill-in with the other land use

Findings regarding Capital Facilities Element Plan amendments

25. Purpose of the Capital Facilities Element Plan amendments
    In November 2018, voters approved Proposition 2 (Public Safety Capital Bonds) providing funding to rebuild the Downtown Fire Station 42 and the Canyon Park Fire Station 45, including safety upgrades, technical modernization and energy efficiency and to accommodate current and future growth.

    To implement the bond, the City needs companion amendments to the City's Capital Facilities Element and its Capital Facilities Plan.

26. The cost to replace both fire stations is expected to be approximately $35,500,000.

27. Scope of the Capital Facilities Element Plan amendments
    This Plan amendment is limited to updating the Capital Facilities Element to reflect the Public Safety Capital Bonds, re-construction and expansion of Stations 42 and 45, and update Fire Station descriptions within the Plan.

28. Plan amendments
    This amendment does not necessitate any policy changes. The amendments are limited to amending the descriptions of Fire Stations 42 and 45, identifying floor area assigned to facilities, personnel, and equipment, and updating the Element to reflect the 2018 Annual Fire Department Report.

29. Department of Commerce Review.
    The proposed Plan and Code amendments were sent to the Department of Commerce October upon completion of the Planning Commission review.

30. State Environmental Policy Act (SEPA) Review.
    The proposed Plan and Code amendments will be evaluated for environmental review upon completion of the Planning Commission review.

31. List of Exhibits.
    1. Letter from Van Ness Feldman dated October 2, 2019
    2. Email from Sound Transit, dated October 2, 2019

Conclusions

1. The potential Plan and Code amendments have been drafted, noticed, reviewed by the public and considered by the Planning Commission in accordance with the applicable laws of the State of Washington and the City of Bothell.

2. The potential Plan and Code amendments are necessary to assist the City in meetings its growth obligations for both population and employment and for capital facilities planning.

3. The potential Plan and Code amendments are in the best interest of the public health, safety and welfare.

Recommendation

Based upon these findings and conclusions and the entire record, the Planning Commission recommends the City Council adopt the proposed Plan and Code amendments which is Attachment 2A, 2B, and 3 to these Findings, Conclusions and Recommendations.

Exhibits

1- Letter from Ms. Molly Lawrence, Legal Counsel Canyon Park Business Center Owners Association dated October 3, 2019
2- Email from Gary Yao, Sound Transit Bus Maintenance Project Manager dated October 3, 2019

The following summarizes the concerns within Exhibits 1 and 2 and provides a response below each summarized concern

<u>Exhibit 1 - Canyon Park Business Center:</u>

- Establish these minimums as part of the Canyon Park Update when improved transportation analysis will be completed.

  Response: There is a need to establish minimums because of the considerable development interest being shown in the Canyon Park and North Creek / NE 95 ST Subareas. Recent developments have proposed densities and intensities that are substantially less than those assumed for the R-AC zone under prior buildable lands analysis. If future buildable lands reports identify a need to reduce those assumed R-AC densities, the City will be required to accommodate that 'lost' growth elsewhere in the City.

  For Canyon Park, regulations applying to the Regional Growth Center must be capable of providing development densities and intensities consistent with the Puget Sound Regional Council Regional Growth Center Framework criteria.

- Concerned with the pace of actions currently affecting the Canyon Park area

  Response: There are indeed many activities affecting Canyon Park. Staff is committed to coordinating with the Owners Association and is available for meetings to discuss issues and concerns.

- Concerned with transportation impacts to the private roads within the Park.

  Response - These are minimum standards that are substantially less than the maximum building area or densities currently allowed within the park. Under today's regulations, buildings may be significantly larger than the minimums recommended by the Planning Commission.

  Further, over the years, the City has taken several actions to establish the currently allowed maximum development levels including establishing activity centers, allowing buildings as tall as 100 feet and even 150 feet for certain manufacturing processes, allowing large percentages of hard surface cover and other provisions which have established the permissible development levels which are much greater than the proposed minimums. Staff has reviewed past environmental documents for Canyon Park which analyzed impacts of development on the transportation system at much greater levels than the proposed minimum FAR.

- Proposed a lower FAR ratio of 0.50.

  Response: The Commission reduced the minimum FAR to 0.50 which more closely resembles existing development. The average FAR of Canyon Park buildings is an FAR of

0.425. Further, a past development proposed an FAR of 1.43. A minimum FAR of 0.50 is consistent with current development patterns.

- Requested existing buildings be exempted from the FAR ratios.
  Response: The Commission exempted existing buildings from the new FAR standards if they are expanded.

Exhibit 2 - Sound Transit

- Sound Transit stated the bus facility in Canyon Park would not be able to comply with the minimum FAR requirement as proposed and requested an exemption as it pertains to essential public facilities
  Response: The Planning Commission did not recommend an exemption for essential public facilities or a lower FAR for the bus facility because the City's Regional Growth Center must comply with Puget Sound Regional Council (PSRC) development levels. This Plan and Code amendment assists the City with complying with these minimum levels.

Exhibits are on the following page

Van Ness Feldman LLP

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Seattle, WA 98104-1728
206-623-9372
vnf.com

October 2, 2019

City of Bothell Planning Commission
c/o Bruce Blackburn, Senior Planner
Bothell City Hall
18415 101st Avenue NE
Bothell, WA 98011

Sent by email: bruce.blackburn@bothellwa.gov

RE: Public Hearing Minimum Density and Intensity Plan and Code Amendments

Dear Chair Vliet and Planning Commissioners:

This firm represents the Canyon Park Business Center Owners' Association ("CPBCOA"). The CPBCOA is comprised of 60 property owners. The Canyon Park Business Center ("the Park") is over 360 acres, contains hundreds of businesses, and is a significant economic development and employment generator for the City of Bothell.

The CPBCOA has been working with City staff on a variety of issues over the past several years, including, but not limited to, the Canyon Park Sub-Area Plan and the I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project. We have always appreciated the willingness of the Community Development Department to seek out and listen to the input of the CPBCOA and the businesses in the Park. We look forward to continuing to work productively with City staff, the Planning Commission and City Council on projects that effect future growth and development in the Park.

With that context, we are writing regarding the proposed amendments to the City of Bothell Comprehensive Plan and Chapter 12 (Zoning) of the Bothell Municipal Code to establish minimum densities and intensities in designated activity centers and R-AC zones ("the Amendments"). The Amendments include establishment of minimum floor area ratios in the Canyon Park regional activity center, within which the Park is located.

The Amendments are the subject of the public hearing before the Planning Commission this evening. As discussed in detail below, the CPBCOA has significant concerns regarding the Amendments as they would apply within the Park. We respectfully request that the Planning Commission's recommendation to City Council include deletion of the Amendments that apply to the Canyon Park regional activity center.

As proposed by Staff, the Amendments would apply within the nine (9) activity centers identified within the Bothell Comprehensive Plan. Among these activity centers, the Canyon Park regional activity center is unique in the following ways:

- The roads within the Park are privately owned and maintained. The CPBCOA has limited authority to require improvements, expansions or other mitigations to the private road system for new development within the Park. The City has not evaluated transportation impacts to the private road system as part of their environmental or traffic review for proposed new development in the Park. The City does not provide police patrols or traffic enforcement within the Park.

- There are three undeveloped properties in the Park. A townhome project has been approved by the City and is under construction on Tracts 22A/B (Tax Parcels 27052900201200 and 27052900201800). The Sound Transit bus maintenance facility is planned on Tract 24 (Tax Parcel 27052900200800). A development plan for Lots 1-4 of the Woodlands Short Plat is being discussed with the City (Tax Parcels 27052900204600, 27052900204700, 27053000106300 and 27053000106400). The remainder of the Park is fully developed with buildings and improvements that are economically sound assets for their owners. There is no current risk of redevelopment of these properties for low density or intensity projects based on their current condition and economic viability.

- The City is in the process of preparing a Sub-Area Plan for the Canyon Park regional activity center. The Sub-Area Plan is the second phase of a three phase planning process. The initial Visioning phase has been completed. A third phase of drafting and adopting development regulations to implement the Sub-Area Plan, planned for the first half of 2020, will complete the process. Through the Sub-Area Plan and implementing regulations, the City intends to significantly increase density and intensity within the Park.

- As part of the Sub-Area Plan, the City will prepare an Environmental Impact Statement (EIS) that identifies the probable significant adverse environmental impacts and recommends mitigation measures. The most significant adverse impacts will be to the transportation system within the Canyon Park Sub-Area. A scoping notice for the EIS was issued on April 8, 2019. Discussions with City staff indicate that the transportation impacts to be analyzed in the EIS are of sufficient complexity to have delayed the development of a scope of work and contracts for the selected transportation consultants to October, 2019.

- The I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project ("the I-405 Project") connects through the Park to SR 527. The analysis of the transportation impacts or proposed mitigations of this project to the private road system within the Park has not been completed. The project will include condemnation of, and improvements to, an undetermined portion of the private road system in the Park, after which the City will accept and maintain those road segments.

- Sound Transit has taken possession in use of Tract 24 within the Park as part of a condemnation process. Sound Transit intends to develop a bus maintenance facility on this property ("the Sound Transit project"). The size of the facility and the resulting environmental impacts are not known at this time. However, the facility will generate significant volumes of heavy vehicle traffic on the private road system within the Park.

- The Canyon Park Sub-Area Plan and EIS must consider how the City will accept dedication of portions of the private road system and provide police patrols and traffic enforcement in the Park. The private road system has limited remaining capacity to support the additional densities and intensities that the City intends for the Canyon Park Sub-Area. The CPBCOA has limited authority to require improvements to the private road system. Unless this issue is resolved and the private streets become public, the City's Sub-Area Plan will not be implementable.

None of the other eight (8) activity centers that are the subject of the Amendments present the level of complexity and uncertainty as the Canyon Park Sub-Area. Based on this context, our comments on the Amendments area as follows:

- It is unknown if the existing private road system can support the minimum floor area ratios proposed by the Amendments. No environmental or traffic analysis has been conducted of the Amendments. The City needs to complete the EIS and transportation analysis for the Sub-Area Plan before proceeding with consideration or adoption of the Amendments.

- The transportation analysis will need to consider also the effects of the two other known pending projects – the I-405 Project and the Sound Transit Project.

- Based on the Department of Ecology's SEPA Register, the most recent Final EIS ("FEIS") prepared for the Imagine Bothell Comprehensive Plan was completed in December, 2004. Addenda to the FEIS for amendments and updates to the Imagine Bothell Comprehensive Plan were completed in July, 2005 and November, 2006. The City cannot rely on the EIS and subsequent addenda for the environmental analysis of the Amendments for the Canyon Park Sub-Area for the following reasons:
    - The EIS and subsequent addenda evaluated the environmental impacts of the Comprehensive Plan at a programmatic level. The analysis in the EIS is of insufficient specificity regarding the current existing conditions of development in the Park, the private road system in the Park, and growth in background traffic levels within the Canyon Park Sub-Area.
    - The EIS and subsequent addenda did not fully analyze either of the two other known pending projects – the I-405 Project and the Sound Transit Project. The I-405 Project is in the process of developing a transportation impact analysis and required mitigations. The CPBCOA is unaware of the status of the transportation impact analysis for the Sound Transit Project. These two major projects must be included in the environmental analysis of the Amendments to add minimum FAR requirements in the Canyon Park Sub-Area.

- By proceeding with the Amendments to establish minimum floor area ratios in the Canyon Park Sub-Area, the City appears to be taking an incremental approach to analyzing the environmental impacts of the proposed Sub-Area Plan. This piecemeal strategy raises potential legal issues, since environmental review under SEPA is intended to analyze the total impacts of inter-related actions. The Amendments to establish minimum floor area ratios are clearly a component of the Sub-Area Plan and implementing regulations. As such, the environmental impacts of the Amendments must be considered comprehensively with the totality of the environmental impacts of the Sub-Area Plan.

- The City met with the CPBCOA on July 10, 2019 to discuss the Canyon Park Sub-Area Plan. The City presented a significant amount of information regarding project background, growth targets, plan alternatives, transportation conditions, the I-405 Project, and next steps. There was no discussion of the Amendments that are the subject of the public hearing tonight or how they fit in to the overall Sub-Area Plan process. The CPBCOA provided the City with a series of questions and comments in response to the presentation on July 26, 2019. As of the date of this letter, we have not received a response to our questions and comments despite a commitment from the City to provide responses to confirm how the issues would be addressed in the Sub-Area Plan and EIS.

- These changes will make the majority of existing buildings in Canyon Park legally non-conforming relative to the minimum non-residential FAR requirement. This results in uncertainty regarding expansion of existing buildings that do not meet the minimum non-residential FAR requirement. To date, the City has made no effort to discuss this issue with the directly affected property owners.

- The differences between the average existing FARs in North Creek (0.386) and Canyon Park (0.426) do not appear to justify the different minimum non-residential FAR requirements in the Amendments of 0.5 and 0.6 respectively. Canyon Park has an average existing FAR that is 0.04 higher than that of North Creek, but the proposed minimum non-residential FAR for Canyon Park is 0.10 higher than that of North Creek.

In conclusion, the proposed Amendments for the Canyon Park Sub-Area are pre-mature until the Sub-Area Plan and EIS have been completed. Before the City can establish minimum FAR requirements for the Canyon Park Sub-Area, many significant issues need to be resolved. The cumulative transportation impacts resulting from the Sub-Area Plan, the I-405 Project, and the Sound Transit Project must be analyzed, and mitigations for those impacts must be identified. A process to transfer the spine roads within the Park to the City must be developed and agreed upon by the CPBCOA and the City to allow for future improvements to support the additional density and intensity. A plan to provide police services and traffic enforcement in the Park must be developed. To comply with SEPA, these issues must be addressed comprehensively.

Therefore, we respectfully reiterate our request that the Planning Commission's recommendation to City Council include deletion of the Amendments that apply to the Canyon Park regional activity center.

Thank you for your consideration of our comments. Please let me know if you have questions or would like to discuss these issues in greater detail.

Sincerely,

Molly A. Lawrence

CC: Michael Kattermann (by email: michael.kattermann@bothellwa.gov)
CPBCOA Board
Tim McHarg
File

105709.3

Bruce Blackburn

From: Yao, Gary <gary.yao@soundtransit.org>
Sent: Wednesday, October 2, 2019 4:21 PM
To: Bruce Blackburn
Cc: Tull, Andrea
Subject: [EXTERNAL] ST Bus Base North - Comments for Minimum FAR in Canyon Park Subarea

Stop! Look! Think before you click! This message originated from outside the City of Bothell network. Use caution when clicking links or opening attachments.

Hi Bruce,

Thank you for walking me through the background and proposed comprehensive plan/code amendment on Monday. I understand that the proposed code amendment will apply a minimum floor area ratio (FAR) to non-residential development in the Canyon Park subarea, where the Bus Base North (BBN) site is located.

Sound Transit provides the following comments for your consideration in advance of the initial Planning Commission public hearing this evening:

- Bus Base North (BBN) is an essential public facility (EPF) that is needed for the operation and maintenance of I-405 and SR-522/NE 145th BRT. Between the BRT corridors, there will be seven total BRT stations in Bothell, including one BRT station in Canyon Park. When service commences, BRT will provide frequent transit service between Bothell and other regional destinations 19 hours a day.
- The BBN site was identified in ST3 and after analysis of potential alternative sites, acquired for the aforementioned operations and maintenance purposes; Sound Transit is unable to fund or develop the site for non-high capacity transit (HCT) purposes. Additionally, as shown on the conceptual plans submitted for the Pre-Application Meeting (City application no. PRE2019-15136), the programmatic needs of BBN consist of extensive areas for site circulation and parking of up to 120 buses and over 250 non-revenue service (NRV) vehicles, which requires a suitably large site. For this 12.58-acre (547,984-SF) site, even if scope/budget/schedule are not adversely impacted, Sound Transit would be responsible for developing 328,790 SF of floor area in order to meet the minimum 0.6 floor area ratio (FAR) proposed. For comparison, this is more than four times the approximately 77,000 SF of floor area proposed for BBN, and more than three times the approximately 140,000 SF existing Operations and Maintenance Facility (OMF) for Central Link.
- At this time, Sound Transit requests that the City consider adding a provision to proposed Bothell Municipal Code (BMC) 12.48.030.C such that an EPF shall not be required to achieve a minimum FAR. The requested provision would eliminate an additional discretionary approval to depart from the minimum FAR standard, which is needed to accommodate BBN, and would allow for a more efficient use of City and Sound Transit resources.
- At this time, Sound Transit also requests that the Planning Commission public hearing be continued in November. Sound Transit has submitted a Pre-Application Meeting (PRE2019-15136) that is currently scheduled for Thursday, October 24, 2019. Sound Transit hopes to use the intervening time and the meeting to discuss the relationship between BBN and growth targets in the Canyon Park subarea.

Thanks again for your time. Please feel free to let me know if you have any questions.

Gary

Gary Yao | Senior Land Use Permitting Administrator

Pronouns: He/Him/His

Exhibit 2

Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-220

Subject: Amendment No. 1 to Interlocal Agreement between Snohomish County and the City of Bothell on an Excise Tax applied to Snohomish County hotels located in Bothell.

Budget Impact/Source of Funds: The Interlocal Agreement on the Excise Tax does not present an impact on the City of Bothell's General Fund; however, if the agreement is not passed by both Bothell City and Snohomish County Councils it would reduce hotel/motel tax funds for the City of Bothell's Lodging Tax Advisory Committee (LTAC) by seventy five percent (75%).

Staff Presenter/Department: DeNae McGee, Tourism Manager, City of Bothell

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Policy Consideration and Connection to Council Goals:

This item asks the City Council to consider if the City should amend our current agreement with Snohomish County to continue receiving a portion (currently 50%) of the Snohomish County special excise tax imposed on Bothell hotels. This tax is collected directly from the hotels and has been in effect since before January 1, 1997. The City began receiving its 50% in 2003. This tax generates roughly three quarters of Bothell tourism's annual budget or $300,000 per year. If the City of Bothell chooses not to receive its portion, it is anticipated that Snohomish County will continue to collect the full amount allowed by law.

Background:

The City of Bothell has two Interlocal Agreements with Snohomish County that support tourism in Bothell. The two agreements affect the six hotels in Bothell which are located within Snohomish County. The three other hotels located in Bothell are not impacted by this excise tax as they are located in King County. The two agreements are an:

1. Interlocal Agreement for Tourism Promotion funded by Special Excise Taxes On the Furnishing of Lodging (Hotel-Motel Tax); and,

2. Interlocal Agreement Authorizing Establishment of the Snohomish County Tourism Promotion Area (TPA).

The first interlocal agreement, Tourism Promotion Funded by Special Excise Taxes, is currently set to expire on December 31, 2019. In this agreement, the county agrees that fifty percent (50%) of the hotel-motel tax collected by the county, in that portion of Bothell also located in Snohomish County, is distributed to the City of Bothell. These funds for the City are to be used for those purposes authorized by Chapter 67.28 RCW and according to the provision of Snohomish County Code Chapter 4.41. Revenue collected from the hotel-motel tax may be used to finance public stadiums, convention centers, arts facilities, tourism facilities, and used in other endeavors

promoting tourism. An example of how the City of Bothell's Lodging Tax Advisory Committee (LTAC) uses these funds is the management and promotion of the Begin at Bothell brand and website. The Snohomish County Tourism Bureau's (SCTB) portion of fifty percent (50%) is used for marketing and costs associated with tourism facilities located in Snohomish County.

In 2001, when the City of Bothell was ready to create an economic development/ tourism program staff negotiated the agreement with Snohomish County. Snohomish County already imposed this special excise tax on hotels and motels in Snohomish County which meant the City of Bothell could not impose this tax on their own (per Chapter 67.28 RCW). According to the Department of Revenue, an Interlocal Agreement between the two entities was the best option for the City to gain access to a portion of the collected excise tax.

Previous City Actions:

- April 1, 2003: City Council approves and the Interlocal Agreement with Snohomish County for Tourism Promotion Funded by Special Excise Taxes on Lodging went into effect.
- 2009: City Council renews Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging
- 2014: City Council renews Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging, set to expire December 31, 2019.

Discussion:

During a review of existing contracts related to tourism, City staff became aware of the expiring Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging. The agreement was written to expire and renew every five (5) years, which has occurred since it was first approved in 2003.

Instead, to promote continuity in funding the City's tourism program and efficiency in administrative requirements, both parties agreed to seek approval from their respective governing bodies to amend the interlocal agreement to go into effect for ten years (10) rather than five (5) years (see Attachment 2).

Maintaining the Interlocal Agreement for the excise tax with Snohomish County is crucial to the Bothell tourism program. This tax generates roughly three quarters of Bothell tourism's annual budget or $300,000 per year. Maintaining this agreement is in the best interest of the citizens of both jurisdictions. It is for this reason, that staff is recommending to council to approve Amendment No. 1 to the Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging.

Category: New Business

- Discussion
- Staff Presentation
- Council Discussion
- Council Direction to Staff

Attachments:

1. Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging between the City of Bothell and Snohomish County;
2. Draft Amendment No. 1 to the Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging between the City of Bothell and Snohomish County

Recommended Action:

Approve and authorize the City Manager to execute Amendment No. 1 of the Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging.

City Manager Approval: _____ Date: 12/09/2019

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City of Bothell
CITY CLERK'S
ORIGINAL
14-212

After Recording Return to:

Council Clerk
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOTHELL AND SNOHOMISH COUNTY CONCERNING TOURISM PROMOTION FUNDED BY SPECIAL EXCISE TAXES ON THE FURNISHING OF LODGING (HOTEL-MOTEL TAX)

1. PARTIES

This Interlocal Agreement (hereinafter "AGREEMENT") is entered into pursuant to Chapter 67.28 RCW (Public Stadium, Convention, Arts, and Tourism Facilities) and Chapter 39.34 RCW (the Interlocal Cooperation Act) by the City of Bothell, a Washington municipal corporation (hereinafter "CITY"), and Snohomish County, a political subdivision of the State of Washington (hereinafter "COUNTY").

2. PURPOSE AND RECITALS

2.1 Pursuant to Chapter 67.28 RCW, the COUNTY has imposed an excise tax on the sale of or charge made for the furnishing of lodging (hotel-motel tax). Revenue from the hotel-motel tax may be used to finance public stadiums, convention centers, arts facilities, tourism facilities, and other endeavors promoting tourism.

2.2 The CITY and COUNTY desire to promote tourism locally and regionally.

2.3 The Washington State Department of Revenue determined in 2001 that, under existing state law, the City of Bothell may not impose or collect **any** hotel-motel tax in that portion of Bothell located in Snohomish County.

2.4 Pursuant to an interlocal agreement between them dated February 10, 2003 and expiring December 31, 2008, the COUNTY agreed that fifty percent (50%) of the hotel-motel tax collected by the COUNTY in that portion of Bothell located in

Snohomish County would be distributed to the CITY to be used by it as provided in that 2003 agreement.

2.5 The CITY and COUNTY believe it is in the best interest of the citizens of both jurisdictions that the COUNTY contract again with the CITY pursuant to this AGREEMENT to promote tourism in that portion of Bothell located in Snohomish County utilizing a portion of the hotel-motel tax collected by the COUNTY within the CITY.

3. APPLICABILITY, ADDENDA AND AMENDMENTS

3.1 Applicability. This AGREEMENT shall apply to hotel-motel tax collected in that portion of Bothell located in Snohomish County while this AGREEMENT is in effect.

3.2 Amendments. The CITY and COUNTY recognize that amendments to this AGREEMENT may be necessary to clarify particular sections or to update and expand the AGREEMENT. Either party may pursue an amendment as necessary.

3.3 Process for amending this AGREEMENT. An addendum or amendment to this AGREEMENT must be mutually agreed by the parties and executed in writing and filed with the Snohomish County Auditor or listed on the COUNTY or CITY'S respective web site before becoming effective. Any addendum or amendment to the AGREEMENT shall be executed in the same manner as provided by law for the execution of the AGREEMENT.

4. DISTRIBUTION AND USE OF HOTEL-MOTEL TAX

4.1 Distribution of hotel-motel tax. The CITY and COUNTY agree that fifty percent (50%) of the hotel-motel tax collected by the COUNTY in that portion of Bothell located in Snohomish County will be distributed to the CITY to be utilized in accordance with Section 4.3.

4.2 Administration. The Washington State Department of Revenue shall be responsible (a) for determining, on a monthly basis, the amount of hotel-motel tax revenues to be distributed to the CITY pursuant to Section 4.1 of this AGREEMENT and (b) for remitting those revenues directly to the CITY in a timely manner.

4.3 Use of hotel-motel tax. All hotel-motel tax revenue distributed to the CITY pursuant to this AGREEMENT will only be used for those purposes authorized by Chapter 67.28 RCW and according to the provisions of Snohomish County Code Chapter 4.41, as now or hereafter amended. The CITY shall, on behalf of the

COUNTY, and without additional expense to the COUNTY, administer the activities within the City of Bothell funded by the hotel-motel tax revenue. The CITY shall provide the COUNTY quarterly reports, in a form specified by the Snohomish County Director of Finance, accounting for its use of such revenue. All distributions to the CITY shall be subject to audit by the COUNTY and any unauthorized expenditures(s) made by the CITY shall be refunded to the COUNTY by the CITY.

5. DISPUTE RESOLUTION

The CITY and COUNTY mutually agree to use a formal dispute process such as mediation, through an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this AGREEMENT. All costs for mediation services shall be divided equally between the CITY and COUNTY. Each jurisdiction shall be responsible for the costs of their own legal representation.

6. EFFECTIVE DATE, DURATION AND TERMINATION

6.1 This AGREEMENT shall become effective following both (a) the approval of the AGREEMENT by the official action of the governing bodies of each of the parties hereto and the signing of the AGREEMENT by the duly authorized representative of each of the parties hereto and (b) the filing of the AGREEMENT with the Snohomish County Auditor pursuant to RCW 39.34.040 or the listing of the AGREEMENT on the COUNTY or the CITY'S respective web site. The AGREEMENT shall expire on December 31, 2019 unless terminated pursuant to Section 6.2, Section 6.3 or Section 6.4 hereof.

6.2 This AGREEMENT may be terminated upon mutual agreement of the parties. Any mutual termination shall become effective ninety (90) days following written amendment to the AGREEMENT executed by both parties.

6.3 Either party may terminate its obligations under this AGREEMENT upon 180 days' advance notice to the other party.

6.4 This AGREEMENT shall terminate upon the effective date of the legislation described in Section 14 hereof.

6.5 Following termination, the COUNTY and CITY are mutually responsible for fulfilling any outstanding obligations under this AGREEMENT incurred prior to the effective date of the termination.

7. INDEMNIFICATION AND LIABILITY

7.1 The CITY shall protect, save harmless, indemnify, and defend, at its own expense, the COUNTY, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the CITY's performance of this AGREEMENT, including claims by the CITY's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of the COUNTY, its elected and appointed officials, officers, employees or agents.

7.2 The COUNTY shall protect, save harmless, indemnify, and defend, at its own expense, the CITY, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the COUNTY's performance of this AGREEMENT, including claims by the COUNTY's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of the CITY, its elected and appointed officials, officers, employees or agents.

7.3 In the event of liability for damages of any nature whatsoever arising out of the performance of this AGREEMENT by the CITY and the COUNTY, including claims by the CITY's or the COUNTY's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the COUNTY and the CITY, their officers, officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's negligence.

7.4 No liability shall be attached to the CITY or the COUNTY by reason of entering into this AGREEMENT except as expressly provided herein.

8. SEVERABILITY

Should a court of competent jurisdiction declare any clause, phrase, sentence or paragraph of this AGREEMENT invalid or void, the remaining provisions of this AGREEMENT not so declared shall remain in full force and effect.

9. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this AGREEMENT shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

10. RECORDS

Both parties shall maintain adequate records to document obligations performed under this AGREEMENT. Both parties shall have the right to review the other party's records with regard to the subject matter of this AGREEMENT, upon reasonable notice.

11. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the parties with respect to the distribution of hotel-motel tax collected in that portion of Bothell located in Snohomish County.

12. GOVERNING LAW AND STIPULATION OF VENUE

This AGREEMENT shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for Snohomish County.

13. CONTACTS FOR AGREEMENT. The contact persons for this AGREEMENT are:

Lenda Crawford	Tami Schackman
Executive Director	Finance Manager
Snohomish County	City of Bothell
3000 Rockefeller Avenue, M/S 407	18305 – 101st Avenue NE
Everett, WA 98201	Bothell, WA 98011
(425) 388-3006	(425) 486-3256

14. WASHINGTON STATE DEPARTMENT OF REVENUE

15.1 Upon its effectiveness pursuant to Section 6.1, the COUNTY shall provide a copy of this AGREEMENT to the Washington State Department of Revenue, which shall be bound by the parties' agreements herein.

15.2 Thereafter, the COUNTY shall provide to the Washington State Department of Revenue (a) copies of any addenda or amendments made to this AGREEMENT pursuant to Section 3.3 and (b) written notices of termination of this AGREEMENT made pursuant to Sections 6.2 or 6.3, PROVIDED, HOWEVER, that the CITY shall provide written notice to the Washington State Department of Revenue of termination of this AGREEMENT pursuant to Section 6.4.

IN WITNESS WHEREOF, the parties have signed this AGREEMENT on the dates indicated below.

Dated this 11th day of December, 2014.

CITY OF BOTHELL
By:

Bob Stowe
Bothell City Manager

Date: 10/14/14

ATTEST:

Bothell City Clerk

Approved as to form only:

City Attorney 10/13/2014 Date

SNOHOMISH COUNTY
By:

for John Lovick 12-11-2014
County Executive STEPHEN CLIFTON
Executive Director

Date: 12/11/14

ATTEST:

Council Clerk, Asst

Approved as to form: only

Rebecca Wendling 3/27/2014
Deputy Prosecuting Attorney Date
Snohomish County

Received and acknowledged by
the State of Washington
Department of Revenue:

Name: _____ Date
Title: _____

COUNCIL USE ONLY
Approved: 12-10-14
Docfile: D-9

AMENDMENT NUMBER 1 TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOTHELL AND SNOHOMISH COUNTY CONCERNING TOURISM PROMOTION FUNDED BY SPECIAL EXCISE TAXES ON THE FURNISHING OF LODGING (HOTEL-MOTEL TAX)

This Amendment No. 1 to the INTERLOCAL AGREEMENT BETWEEN THE CITY OF BOTHELL AND SNOHOMISH COUNTY CONCERNING TOURISM PROMOTION FUNDED BY SPECIAL EXCISE TAXES ON THE FURNISHING OF LODGING (HOTEL-MOTEL TAX) is entered into by SNOHOMISH COUNTY, a political subdivision of the State of Washington ("COUNTY"), and the City of Bothell, a municipal corporation of the State of Washington ("CITY"), collectively "parties".

Whereas, the current interlocal agreement expires on December 31, 2019, and

Whereas, the Parties wish to extend the duration of the interlocal agreement,

NOW, THEREFORE, the Parties agree as follows:

1. Section 6 of the AGREEMENT, "EFFECTIVE DATE, DURATION, AND TERMINATION" is hereby amended as follows, with new provisions shown in underline and deleted portions shown in strikethrough:

   6. EFFECTIVE DATE, DURATION, AND TERMINATION

   6.1 This Agreement shall be effective following both (a) the approval of the AGREEMENT by the official action of the governing bodies of each of the parties hereto and the signing of the AGREEMENT by the duly authorized representative of each of the parties hererto and (b) the filing of the AGREEMENT with the Snohomish County Auditor pursuant to RCW 39.34.040 or the listing of the AGREEMENT on the COUNTY or the CITY'S respective website. The AGREEMENT shall expire on December 31, 2029. Should a comparable lodging tax opportunity become available to CITY in Snohomish County under Chapter 67.28 RCW, which is confirmed by the Department of Revenue, this agreement shall terminate six months after DOR confirmation.

   6.2 Following termination, the COUNTY and CITY are mutually responsible for fulfilling any outstanding obligations under the AGREEMENT incurred prior to the effective date of the termination.

2. Section 15.2 of the AGREEMENT is hereby amended as follows, with new provisions shown in underline and deleted portions shown in strikethrough:

   15.2 Thereafter, the COUNTY shall provide to the Washington State Department of Revenue (a) copies of any addenda or amendments made to this AGREEMENT pursuant to Section 3.3 and (b) written notices of termination of this AGREEMENT made pursuant to Section 6.1, PROVIDED, HOWEVER, that the CITY shall provide written notice to the

Washington State Department of Revenue of termination of this AGREEMENT pursuant to Section 6.1.

All other terms and conditions of the AGREEMENT shall remain in full force and effect except as expressly modified by this Amendment No. 1.

3. Counterparts. This Amendment No. 1 may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS THEREOF, COUNTY and CITY have executed this AGREEMENT by their duly authorized officers as of the date last below written.

SNOHOMISH COUNTY	CITY OF BOTHELL
_____	_____
_____	Jennifer Phillips
Snohomish County Executive	City Manager
Date: _____	Date: _____

APPROVED AS TO FORM:

_____	_____
_____	Paul Byrne
Prosecuting Attorney	Bothell City Attorney

Bothell City Council
AGENDA BILL

Meeting Date: December 3, 2019 Action ☒ No Action ☐ AB #:19-221

Subject: Amendment No. 1 to the Interlocal Agreement Establishing a Tourism Promotion Area (TPA), increasing the assessment from one dollar ($1.00) per night visit at Snohomish County hotels to two dollars ($2.00) per night visit.

Budget Impact/Source of Funds: The Amendment No. 1 to the Interlocal Agreement establishing a TPA presents no impact on the City of Bothell's General Fund. It also presents no impact to the hotel/motel tax for the City of Bothell's LTAC. All funds collected go directly to Snohomish County. This assessment, if passed by Bothell City Council, is slated to go into effect sometime in 2020, impacting Bothell hotels located in Snohomish County only.

Staff Presenter/Department: DeNae McGee, Tourism Manager, City of Bothell
Rich Huebner, Tourism Promotion Coordinator, Snohomish County Department of Parks, Recreation & Tourism

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Policy Consideration and Connection to Council Goals:

The item asks the City Council to consider if the City should approve Snohomish County to collect an additional Tourism Promotion Area (TPA) assessment of $1.00, increasing to a total of $2.00 per night visit, at hotels located in the Snohomish County portion of Bothell. This assessment is collected from hotels directly and Snohomish County receives 100% of the funds collected.

Background:

The City of Bothell has two Interlocal Agreements with Snohomish County that support tourism in Bothell. The two agreements affect six hotels in Bothell which are located within Snohomish County. The three other hotels in Bothell are not impacted by this excise tax as they are located in King County. The two agreements are an:

1. Interlocal Agreement for Tourism Promotion Funded by Special Excise Taxes on the Furnishing of Lodging (Hotel-Motel Tax); and,

2. Interlocal Agreement Authorizing Establishment of the Snohomish County Tourism Promotion Area (TPA).

The first agreement, Tourism Promotion Funded by Special Excise Taxes, is currently in effect until December 31, 2019. Separately, the City Council is being asked to consider an amendment to extend this agreement which has been in effect since 2003.

In effect since 2011, the second agreement is an Interlocal Agreement establishing a Tourism Promotion Area (TPA) which allows the County to collect a $1.00 per night visit on hotels located in Snohomish County in Bothell.

Chapter 35.101.080 of the Revised Code of Washington (RCW) allows local municipalities to establish a TPA upon petition of its local lodging industry by assessing a fee of no greater than two dollars ($2.00) per night on hotel and motel rooms rented within this area. Snohomish County received an initiation petition in 2010, and on December 15, 2010, the Snohomish County adopted Chapter 4.118 of the Snohomish County Code (SCC), which established the Snohomish County TPA and a one dollar ($1.00) per night assessment on rooms rented at lodging businesses with fifty (50) or more rooms. As required by RCW 35.101, Snohomish County executed Interlocal Agreements with each of the nine municipalities which have lodging of fifty (50) or more rooms. There are six hotels in Bothell that currently collect this one-dollar ($1.00) assessment fully remitted to Snohomish County.

The TPA assessment is not divided between the City of Bothell and Snohomish County as is the case with the first interlocal agreement (Special Excise Tax). Instead, funds from the TPA are currently used to provide grant funds to promote tourism and are reviewed by the TPA Advisory Board, pursuant to RCW 35.101.

In 2017, The TPA Advisory Board requested the county consider increasing the TPA assessment from one dollar ($1.00) to the full two dollar ($2.00) per room night allowed by RCW 35.101.

Previous City Actions:

- 2011: Snohomish County executes an Interlocal Agreement authorizing the establishment of the Snohomish County TPA entered between the county and cities of Arlington, Bothell, Edmonds, Everett, Lynnwood, Marysville, Monroe, Mountlake Terrace, and Mukilteo.

Discussion:

Snohomish County requested that the City consider approval of Amendment No. 1 to the Interlocal Agreement establishing a Tourism Promotion Area (TPA), which would increase the current assessment from one dollar ($1.00) per night visit at Snohomish County hotels to two dollars ($2.00) per night visit.

Funds from the TPA are currently used to provide grant funds to promote tourism and are reviewed by the Snohomish County TPA Advisory Board, pursuant to RCW 35.101.The City of Bothell does not collect this tax and only benefits from the tax in the event grant recipients stay at Bothell based Snohomish County hotels. Some of the more popular locations where grant recipients host events in Snohomish County located near Bothell hotels include: Evergreen State Fairgrounds, Willis Tucker Park, Edmonds Community College, and Meadowdale Playfields.

The TPA Advisory Board requested the county consider increasing the TPA assessment from one dollar ($1.00) to the full two dollar ($2.00) per room night allowed by RCW 35.101. This additional revenue is intended for construction of an indoor multipurpose event facility to promote recreational tourism with overnight stays to hotels in Snohomish County. A market analysis

feasibility study was completed in the summer of 2018, and in March 2019, the consultant team delivered its final recommendation to Snohomish County for an approximately 60,000 square foot indoor sports and multipurpose facility.

Site analysis and selection for the recommended venue is currently underway; however, the TPA Advisory Board's most desired location is near Everett along the I-5, Highway 2 corridor. A secondary option, though less desirable to the TPA Advisory Board, is the Evergreen State Fairgrounds.

There is currently no plan in place for how the additional one dollar increase to the TPA will be used if site selection cannot be procured for a new sports facility. The County has indicated it does not intend to reverse the tax from two dollars ($2.00) back to one dollar ($1.00) if this should occur, and anticipates they would continue collecting the additional tax. There is currently $3,600,000 in the TPA reserve account.

In October 2018, the Snohomish County Parks, Recreation and Tourism (SCPRT) Department contacted the Snohomish County Prosecuting Attorney's office who provided SCPRT an interpretation of RCW 35.101. Of importance is that TPA funds cannot be used for capital construction projects. Discussion between SCPRT, the TPA board, and SCTB have resulted in a plan to shift funding of tourism development and marketing to TPA funds, freeing the excise tax funds currently dedicated to this expense to be bonded against for construction, a usage expressly allowed for lodging tax funds under RCW 67.28. According to SCPRT, staff research has shown that funding of tourism development and marketing with TPA funds is a prevailing standard throughout Washington State.

On August 30, Bothell staff sent a survey to the six Bothell based hoteliers located in Snohomish County to receive input on how they feel about the current one dollar TPA ($1.00) tax as well as the additional one dollar ($1.00) proposed tax increase. Staff followed up with reminder calls and 50% of hoteliers responded to the questionnaire.

When asked if the current $1.00 TPA assessment brings overnight stays to their respective hotels, respondents either disagreed or were neutral. When asked if a new potential facility, sited in Everett, would bring more overnight stays, the respondents either disagreed or were neutral. When asked if they supported the increase without knowing where the new potential facility would be located, respondents either disagreed or were neutral. General comments indicated that hotels were not sure that the current (or an increased) TPA assessment brings more stays to their hotel. Also, a respondent indicated that they thought a facility located closer to Bothell would be more beneficial for increasing hotel stays.

The City of Bothell's Lodging Tax Advisory Committee (LTAC) met on September 17, 2019 and unanimously approved a recommendation to the Council to adopt the increase of the TPA assessment from the current one dollar ($1.00) per hotel night stay to two dollars ($2.00) per night stay in Snohomish County Bothell hotels.

Overall, City and County staff believe it is in the best interest of the citizens of both jurisdictions to support a strong, ongoing relationship with each other for the purpose of promoting tourism. The City of Bothell is best supported by maintaining the Interlocal Agreement for Tourism Promotion Funded by Lodging (Hotel-Motel Tax), as it generates roughly three-quarters of Bothell

tourism's annual budget or $300,000 per year. Snohomish County is directly supported by the City Council's support of Amendment No. 1 to the Interlocal Agreement Establishing the TPA for Snohomish County, increasing the assessment from one dollar ($1.00) to two dollars ($2.00) per night stay in Snohomish County Bothell hotels.

Category: New Business

- Staff Presentation
- Council Discussion
- Council Direction to Staff

Attachments:

1. Interlocal Agreement Establishing the Tourism Promotion Area (TPA) in Snohomish County
2. Draft Amendment No. 1 to the Interlocal Agreement Interlocal Agreement Establishing the Tourism Promotion Area (TPA) in Snohomish County providing for an assessment increase

---

Recommended Action:

Approve and authorize the City Manager to execute Amendment No. 1 to the Interlocal Agreement establishing the Tourism Promotion Area (TPA) in Snohomish County.

City Manager Approval: _____ Date: 11/24/2019

11-066

City of Bothell
CITY CLERK'S
ORIGINAL

After recording return to:
Ms. Barbara Sikorski
Assistant Clerk
Snohomish County Council
3000 Rockefeller Avenue, M/S 609
Everett, WA 98201

CONFORMED COPY
201104260195 21 PGS
04/26/2011 9:47am $0.00
SNOHOMISH COUNTY, WASHINGTON

COPY

INTERLOCAL AGREEMENT AUTHORIZING ESTABLISHMENT OF THE SNOHOMISH COUNTY TOURISM PROMOTION AREA

THIS AGREEMENT ("Agreement") is entered into by and among SNOHOMISH COUNTY, a political subdivision of the State of Washington ("County"), and the CITY OF ARLINGTON, a municipal corporation of the State of Washington, CITY OF BOTHELL, a municipal corporation of the State of Washington, CITY OF EVERETT, a municipal corporation of the State of Washington, CITY OF EDMONDS, a municipal corporation of the State of Washington, CITY OF LYNNWOOD, a municipal corporation of the State of Washington, CITY OF MARYSVILLE, a municipal corporation of the State of Washington, CITY OF MONROE, a municipal corporation of the State of Washington, CITY OF MOUNTLAKE TERRACE, a municipal corporation of the State of Washington, and CITY OF MUKILTEO, a municipal corporation of the State of Washington (collectively "Cities") pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Tourism Promotion Areas Act, Chapter 35.101 RCW, to authorize the establishment of a Tourism Promotion Area to levy lodging charges to fund tourism promotion as provided herein.

RECITALS

WHEREAS, in 2003 the Washington Legislature, recognizing the importance of tourism promotion, by Chapter 35.101 RCW authorized counties and cities to establish Tourism Promotion Areas (TPAs) and levy lodging charges to fund tourism promotion; and

WHEREAS, the operators of lodging businesses located within the County presented an Initiation Petition to the County Council seeking establishment of a county-wide TPA pursuant to RCW 35.101.020; and

WHEREAS, the Initiation Petition contains all of the elements required by RCW 35.101.020 including a description of the boundaries of the proposed TPA, a statement of proposed uses and projects to which the revenue from the charges would be dedicated and total

EXHIBIT A

estimated revenues and project costs, the estimated rate of charges to be imposed, and the signatures of the persons who operate lodging businesses who would pay sixty percent or more of the proposed charges; and

WHEREAS, the Initiation Petition provides for charges of $1.00 per room night of occupancy to be imposed on lodging businesses within the TPA that have 50 or more lodging units; and

WHEREAS, by Resolution of Intention adopted as Motion No. 10-112 the County Council gave notice of the time and place of a public hearing to consider establishment of a TPA, described the boundaries of the TPA as including all properties within the Cities and unincorporated areas of the County, which boundaries are in the area described in the Initiation Petition, and stated the proposed uses and projects to which the proposed revenues would be dedicated and total estimated project costs, and the estimated rate of charges to be imposed within those boundaries, as required by RCW 35.101.030; and

WHEREAS, on March 31. 2010, the County Council held a public hearing to consider establishment of a TPA in which representatives of the lodging industry testified in support of establishment of a TPA in Snohomish County; and

WHEREAS, by Resolution of Intention adopted as Motion No. 10-557 the County Council supplemented Motion No. 10-112 by providing for additional public notice and hearing in order to clarify the boundaries and related elements of the proposed TPA and to assure that notice of the hearing to consider establishment of a TPA is provided to all lodging businesses, including lodging businesses with 40 or more but fewer than 50 lodging units, as required by RCW 35.101.060, and

WHEREAS, the Cities and County have by appropriate legislative action, authorized or will authorize the execution of this interlocal agreement to permit the establishment of a TPA to be known as the Snohomish County Tourism Promotion Area and the collection of lodging charges from lodging businesses that have 50 or more lodging units as further described herein;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the County and Cities agree as follows:

1. Purpose. The purpose of this Agreement is to promote tourism in Snohomish County by authorizing the establishment of the Snohomish County Tourism Promotion Area pursuant to RCW 35.101 which when created will permit collection of lodging charges from lodging businesses located within the Snohomish County TPA to fund tourism promotion.

2. Definitions. In this Agreement the following terms, unless the context otherwise dictates, shall have the following meanings:

2.1 "Department of Revenue" shall mean the Washington State Department of Revenue.

2.2 "Lodging business" shall mean a person that furnishes lodging taxable by the state of Washington under chapter 82.08 RCW that has 40 or more lodging units.

2.3 "Lodging charge" shall mean the levy imposed by Snohomish County on lodging businesses pursuant to Chapter 35.101 RCW.

2.4 "Snohomish County Tourism Promotion Area" or "Snohomish County TPA" shall mean the Tourism Promotion Area created by the Snohomish County Council acting by ordinance pursuant to Chapter 35.101 RCW and this Agreement.

2.5 "State Treasurer" shall mean the Washington State Treasurer.

2.6 "Tourism promotion" shall mean activities and expenditures designed to increase tourism and convention and sports business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists, and operating tourism destination marketing organizations.

3. Establishment of Snohomish County TPA.

3.1 It is understood and agreed that the Snohomish County Council, pursuant to the authority of Chapter 35.101 RCW, will by ordinance establish a Tourism Promotion Area, to be known as the Snohomish County Tourism Promotion Area, to include the unincorporated area of Snohomish County and the entire area within the corporate limits of the Cities.

3.2 It is understood and agreed that the purpose of authorizing the Snohomish County Council and Snohomish County to form the Snohomish County Tourism Promotion Area is to provide revenue to fund promotion of tourism in Snohomish County.

4. Levy of Lodging Charges within the Snohomish County TPA.

4.1 It is understood and agreed that the Snohomish County Council will by ordinance impose lodging charges on the furnishing of lodging by certain lodging businesses located within the Snohomish County Tourism Promotion Area in accordance with the zones and rates stated in this Agreement.

4.2 It is understood and agreed that in accordance with RCW 35.101.090 the County will contract for the administration and collection of the lodging charges by the Department of Revenue.

4.3 It is understood and agreed that the Snohomish County Tourism Promotion Area will include the following three zones:

Zone A. Zone A encompasses lodging businesses located within the Snohomish County Tourism Promotion Area that furnish lodging taxable by the state under Chapter 82.08 RCW that have 50 or more lodging units and are not within another zone.

Zone B. Zone B encompasses lodging businesses located within the Snohomish County Tourism Promotion Area as that term is used in WAC 458-20-166 other than hotels, motels, and bed and breakfast facilities. Lodging businesses within this zone, as addressed in WAC 458-20-166, include only (i) trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, and tents; (ii) educational institutions which sell overnight lodging to persons other than students; (iii) private lodging houses, dormitories and bunkhouses operated by or on behalf of businesses and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained; and (iv) guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreational facilities and instruction in sports, boating, riding, outdoor facilities and instruction in sports, boating, riding, and outdoor living.

Zone C. Zone C encompasses lodging businesses located within the Snohomish County Tourism Promotion Area that furnish lodging taxable by the state under chapter 82.08 RCW that have 40 to 49 lodging units.

4.4 It is understood and agreed that lodging businesses located within the Snohomish County Tourism Promotion Area will be subject to lodging charges for each zone as follows:

Zone A: $1.00 per room/day
Zone B: $0.00 per room/day
Zone C: $0.00 per room/day

4.5 It is understood and agreed that in accordance with RCW 35.101.055, RCW 35.101.110, and RCW 35.101.120 the lodging charges to be imposed under this Agreement are not applicable to temporary medical housing exempt under RCW 82.08.997, are not a tax on the "sale of lodging" for purposes of RCW 82.14.410, and are in addition to the special assessments that may be levied under Chapter 35.87A RCW.

5. Administration and Collection of Lodging Charges.

5.1 It is understood and agreed that in accordance with RCW 35.101.090 the lodging charges authorized by this Agreement will be administered by the Department of Revenue and collected by lodging businesses from those persons who are taxable by the state under Chapter 82.08 RCW, that the Department of Revenue will deposit the lodging charges into the Local Tourism Promotion Account administered by Treasurer under RCW 35.101.100, and that the lodging charges are subject to Chapter 82.32 RCW.

5.2 It is understood and agreed that in accordance with RCW 35.101.100 the State Treasurer will distribute the money in the Local Tourism Promotion Account to the County on a monthly basis.

6. Establishment of Advisory Board.

6.1 It is understood and agreed that in accordance with RCW 35.101.130 the Snohomish County Council will by ordinance create an advisory board to make recommendations regarding the use of lodging charges collected pursuant to this Agreement.

6.2 It is understood and agreed that the advisory board will include representation of lodging businesses that are subject to the lodging charges authorized by this Agreement.

7. Use of Revenues for Tourism Promotion in Snohomish County.

7.1 It is understood and agreed that the revenues derived from the lodging charge will be used for tourism promotion as defined in RCW 35.101.010 and that pursuant to RCW 35.101.130 the Snohomish County Council will have sole discretion as to how such revenues will used for this purpose. The County Council will allocate revenues to specific projects after considering the recommendations of the advisory board and in accordance with the applicable TPA business plan.

7.2 In accordance with the Initiation Petition, the revenues derived from the lodging charges will be used only for the following purposes:

7.2.1 The general promotion of tourism within Snohomish County as specified in the TPA business plan to be adopted annually by the Snohomish County Council;

7.2.2 The marketing of convention and trade shows that benefit local tourism and the lodging businesses in Snohomish County;

7.2.3 The marketing of Snohomish County to the travel industry in order to benefit local tourism and the lodging businesses in Snohomish County; or

7.2.4 The marketing of Snohomish County to recruit sporting events in order to benefit local tourism and the lodging businesses in Snohomish County.

7.3 The uses described in this section may include payment of administrative costs associated with operation of the Snohomish County TPA as determined by the County Council.

8. Contract for Management of the Snohomish County TPA.

The County Council may contract with tourism marketing organizations or other similar organizations to administer the operation of the TPA in accordance with RCW 35.101.130 or other law.

9. Modification or Disestablishment of the Snohomish County TPA.

9.1 The Snohomish County Council may modify or disestablish the Snohomish County TPA by ordinance after adoption of a resolution of intention and public hearing. The resolution of intention shall describe the proposed action and state the time and place of the public hearing, and may be adopted by motion

9.2 The County Council must adopt a resolution of intention and hold a public hearing to consider modification or disestablishment of the Snohomish County TPA if a petition for modification or disestablishment containing the signatures of persons who operate lodging businesses that pay over 40 percent of the lodging charge imposed by SCC 4.118.020 is filed with the Clerk of the County Council.

9.3 If a petition for disestablishment of the Snohomish County TPA containing the signatures of persons who operate lodging businesses that pay over 40 percent of the lodging charge imposed by SCC 4.118.020 is filed with the Clerk of the County Council, the Council must disestablish the Snohomish County TPA unless at the public hearing described in the resolution of intention protest is made by persons who operate lodging businesses that pay over 50 percent of the lodging charge imposed by SCC 4.118.020. An ordinance adopted under this paragraph shall take effect within a reasonable time as determined by the County Council.

10. Miscellaneous Provisions.

10.1 Term of Agreement. This Agreement shall continue in full force and effect until such time as the Snohomish County TPA is disestablished by action of the Snohomish County Council, provided that if the Snohomish County TPA is modified to exclude the

entire area within the corporate boundary of any City then this Agreement shall terminate as to that City. Following termination of this Agreement, Snohomish County shall be responsible for utilizing any remaining unallocated revenue from lodging charges for promotion of tourism in Snohomish County. Any property or equipment purchased with revenues from lodging charges shall be retained by Snohomish County and used for any lawful purpose.

10.2 Waiver. No officer, employee, or agent of the County or any City has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement by the County or any City shall be held to be a waiver of any other or subsequent breach. Failure of the County or any City to enforce any of the provisions of this Agreement or to require performance of any of the provisions herein, shall in no way be construed to be a waiver of such conditions, nor in any way effect the validity of this Agreement or any part hereof, or the right of the County or City to hereafter enforce each and every such provision.

10.3 Integration. This Agreement contains all of the terms and conditions agreed upon by the County and Cities concerning the establishment of the Snohomish County TPA by the Snohomish County Council and the collection of lodging charges from operators of lodging businesses within the Snohomish County TPA, including the area within the incorporated city limits of the Cities. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. The parties have read and understand all of this Agreement, and now state that no representation, promise or agreement not expressed in this Agreement has been made to induce the officials of the County and Cities to execute this Agreement.

10.4 Severability. In the event that any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

10.5 Effective Date. This Agreement shall become effective after execution by the County and all of the Cities upon filing with the Snohomish County Auditor pursuant to RCW 39.34.040.

10.6 Each Party Responsible for its Negligence.

10.6.1 Each party to this Agreement will be responsible for the negligent acts or omissions of its own elected officials, officers, employees, or agents in the performance of this Agreement. Neither party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

10.6.2 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 two or more parties to this Agreement, or their elected officials, officers employees, or agents, each party's liability under this Agreement shall be only to the extent of that party's negligence.

10.7 No Real Property Acquisition. This Agreement does not provide for the acquisition, holding, or disposal of real property.

10.8 Amendment. This Agreement may be amended with the mutual consent of the parties. No additions to or alteration of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of all parties.

10.9 Notices. All notices and other communications shall be in writing and shall be sufficiently given and shall be deemed given on the third day following the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

To the County:	Snohomish County Council 3000 Rockefeller Avenue Everett, WA 98201 and to: Snohomish County Executive 3000 Rockefeller Avenue Everett, WA 98201
To the City of Arlington:	City of Arlington 238 N. Olympic Avenue Arlington, WA 98223 Attn: City Council
To the City of Bothell:	City of Bothell 18305 101st Avenue NE Bothell, WA 98011 Attn: City Council
To the City of Everett:	City of Everett 2930 Wetmore Avenue Everett, WA 98201 Attn: City Council

To the City of Edmonds: City of Edmonds
121 5th Avenue North
Edmonds, WA 98020
Attn: City Council

To the City of Lynnwood: City of Lynnwood
19100 44th Avenue West
Lynnwood, WA 98046
Attn: City Council

To the City of Marysville: City of Marysville
1049 State Avenue
Marysville, WA 98270
Attn: City Council

To the City of Monroe: City of Monroe
806 West Main Street
Monroe, WA 98272
Attn: City Council

To the City of Mountlake Terrace: City of Mountlake Terrace
6100 219th Street SW, Suite 200
Mountlake Terrace, WA 98043
Attn: City Council

To the City of Mukilteo: City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275
Attn: City Council

Any Party may, by notice to all other Parties given hereunder, designate any further or different addresses to which subsequent notices or other communications to it shall be sent.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, Snohomish County and the Cities of Arlington, Bothell, Everett, Edmonds, Lynnwood, Marysville, Monroe, Mountlake Terrace, and Mukilteo have

executed this Agreement by their duly authorized officers as of the date last below written.

COUNCIL USE ONLY
Approved: 12-15-2010
Docfile D-33

SNOHOMISH COUNTY:

for:

Snohomish County Executive
DATE: 3-22-11

GARY HAAKENSON
Deputy County Executive

Approved as to form only:

Deputy Prosecuting Attorney

CITY OF ARLINGTON

Name/Title:
DATE:

Approved as to form only:

Arlington City Attorney

CITY OF BOTHELL

Name/Title:
DATE:

Approved as to form only:

Bothell City Attorney

CITY OF EVERETT

Name/Title:
DATE:

TOURISM PROMOTION AREA INTERLOCAL

APPROVED AT THE DIRECTION OF THE ARLINGTON CITY COUNCIL
March 7, 2011

Margaret Larson
Mayor

Dated 3/14/11

ATTEST:

Kristin Banfield
City Clerk

Dated 3/14/11

APPROVED AS TO FORM:

Steven J. Peiffle
City Attorney

Dated 3/14/11

executed this Agreement by their duly authorized officers as of the date last below written.

SNOHOMISH COUNTY:

Gary Haakenson for:

Snohomish County Executive
DATE: 3-22-11

GARY HAAKENSON
Deputy County Executive

Approved as to form only:

Deputy Prosecuting Attorney

CITY OF ARLINGTON

Name/Title:
DATE:

Approved as to form only:

Arlington City Attorney

CITY OF BOTHELL

Name/Title: Stephen L. Anderson
DATE: 2/14/2011

Approved as to form only:

Joseph M Beck

Bothell City Attorney

CITY OF EVERETT

Name/Title:
DATE:

executed this Agreement by their duly authorized officers as of the date last below written.

SNOHOMISH COUNTY:

_____ for:

Snohomish County Executive GARY HAAKENSON

DATE: 3-22-11 Deputy County Executive

Approved as to form only:

_____

Deputy Prosecuting Attorney

CITY OF ARLINGTON

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Arlington City Attorney

CITY OF BOTHELL

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Bothell City Attorney

CITY OF EVERETT

_____

Name/Title: _____

DATE: 12-15-2010

Attest: Sharon Marks City Clerk

Approved as to form only:

Everett City Attorney

CITY OF EDMONDS

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Edmonds City Attorney

CITY OF LYNNWOOD

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Lynnwood City Attorney

CITY OF MARYSVILLE

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Marysville City Attorney

Approved as to form only:

_____
Everett City Attorney

CITY OF EDMONDS

_____
Name/Title: Mike Cooper / Mayor
DATE: 1-7-2011

Approved as to form only:

_____
Edmonds City Attorney

CITY OF LYNNWOOD

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Lynnwood City Attorney

CITY OF MARYSVILLE

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Marysville City Attorney

Approved as to form only:

_____
Everett City Attorney

CITY OF EDMONDS

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Edmonds City Attorney

CITY OF LYNNWOOD

_____
Name/Title: Mayor
DATE: 2-23-11

Approved as to form only:

_____
Lynnwood City Attorney

CITY OF MARYSVILLE

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Marysville City Attorney

Approved as to form only:

_____
Everett City Attorney

CITY OF EDMONDS

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Edmonds City Attorney

CITY OF LYNNWOOD

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Lynnwood City Attorney

CITY OF MARYSVILLE

_____
Name/Title: MAYOR, JON NEHRING
DATE: 12/13/10

Approved as to form only:

_____
Marysville City Attorney

CITY OF MONROE

Name/Title: Mayor Robert Zimmerman
DATE: 2/4/11

Approved as to form only:

Monroe City Attorney

CITY OF MOUNTLAKE TERRACE

Name/Title: _____
DATE: _____

Approved as to form only:

Mountlake Terrace City Attorney

CITY OF MUKILTEO

Name/Title: _____
DATE: _____

Approved as to form only:

Mukilteo City Attorney

CITY OF MONROE

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Monroe City Attorney

CITY OF MOUNTLAKE TERRACE

_____

Name/Title: JOHN J. CAULFIELD, CITY MANAGER

DATE: 2-14-2011

Approved as to form only:

_____ 2-14-11

Mountlake Terrace City Attorney

CITY OF MUKILTEO

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Mukilteo City Attorney

CITY OF MONROE

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Monroe City Attorney

CITY OF MOUNTLAKE TERRACE

_____

Name/Title: _____

DATE: _____

Approved as to form only:

_____

Mountlake Terrace City Attorney

CITY OF MUKILTEO

Joe Marine

Name/Title: Joe Marine Mayor

DATE: 12/20/10

Approved as to form only:

_____

Mukilteo City Attorney

AMENDMENT NUMBER 1 TO THE INTERLOCAL AGREEMENT AUTHORIZING ESTABLISHMENT OF THE SNOHOMISH COUNTY TOURISM PROMOTION AREA

THIS AMENDMENT NUMBER 1 TO THE INTERLOCAL AGREEMENT AUTHORIZING ESTABLISHMENT OF THE SNOHOMISH COUNTY TOURISM PROMOTION AREA ("Amendment No 1) is entered into by and among SNOHOMISH COUNTY, a political subdivision of the State of Washington ("County"), and the CITY OF ARLINGTON, a municipal corporation of the State of Washington, CITY OF BOTHELL, a municipal corporation of the State of Washington, CITY OF EVERETT, a municipal corporation of the State of Washington, CITY OF EDMONDS, a municipal corporation of the State of Washington, CITY OF LYNNWOOD, a municipal corporation of the State of Washington, CITY OF MARYSVILLE, a municipal corporation of the State of Washington, CITY OF MONROE, a municipal corporation of the State of Washington, CITY OF MOUNTLAKE TERRACE, a municipal corporation of the State of Washington, and CITY OF MUKILTEO, a municipal corporation of the State of Washington (collectively "Cities") pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Tourism Promotion Areas Act, Chapter 35.101 RCW.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4.4 of the Agreement is amended to read in its entirety as follows:

It is understood and agreed that lodging businesses located within the Snohomish County Tourism Promotion Area will be subject to lodging charges for each zone as follows:

Zone A: $2.00 per room/day
Zone B: $0.00 per room/day
Zone C: $0.00 per room/day

2. Section 9.2 of the Agreement is amended to read in its entirety as follows:

   The County Council must adopt a resolution of intention and hold a public hearing to consider modification of the Snohomish County TPA if a petition for modification containing the signatures of persons who operate lodging businesses that pay over 40 percent of the lodging charge imposed by SCC 4.118.020 is filed with the Clerk of the County Council.

3. Section 9.3 of the Agreement is amended to read in its entirety as follows:

   If a petition for ((~~disestablishment~~))modification of the tourism promotion area containing the signatures of persons who operate lodging businesses that pay over 40 percent of the lodging charge imposed by SCC 4.118.020 is filed with the clerk of the council, the council must ((~~disestablish~~))modify the tourism promotion area unless at the public hearing described in the resolution of intention protest is made by persons who operate lodging businesses that pay over 50 percent of the lodging charge imposed by SCC 4.118.020. An ordinance adopted under this paragraph shall take effect within a reasonable time as determined by the council.

4. All other terms and conditions of the Agreement shall remain in full force and effect except as expressly modified by this Amendment No 1.

5. Counterparts. This Amendment No 1 may be executed in counterparts, each of which shall constitute an original and all of which shall constitute on and the same agreement.

IN WITNESS WHEREOF, Snohomish County and the Cities of Arlington, Bothell, Everett, Edmonds, Lynnwood, Marysville, Monroe, Mountlake Terrace, and Mukilteo have executed this Agreement by their duly authorized officers as of the date last below written.

SNOHOMISH COUNTY:

_____

Snohomish County Executive
DATE:

Approved as to form only:

_____
Deputy Prosecuting Attorney

CITY OF ARLINGTON

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Arlington City Attorney

CITY OF BOTHELL

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Bothell City Attorney

CITY OF EVERETT

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Everett City Attorney

CITY OF EDMONDS

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Edmonds City Attorney

CITY OF LYNNWOOD

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Lynnwood City Attorney

CITY OF MARYSVILLE

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____

Marysville City Attorney

CITY OF MONROE

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Monroe City Attorney

CITY OF MOUNTLAKE TERRACE

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Mountlake Terrace City Attorney

CITY OF MUKILTEO

_____
Name/Title: _____
DATE: _____

Approved as to form only:

_____
Mukilteo City Attorney

AMENDMENT 1 TO INTERLOCAL AGREEMENT AUTHORIZING
ESTABLISHMENT OF THE SNOHOMISH COUNTY
TOURISM PROMOTION AREA RATE INCREASE

Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #:19-222

Subject: Interlocal Agreement to create North King County Training Consortium with City of Bothell Fire Department, Woodinville Fire & Rescue, Northshore Fire Department and Shoreline Fire Department

Budget Impact/Source of Funds: The City is creating an ongoing financial obligation with this agreement. The annual value of that obligation is offset by the training resources contributed to the consortium by the City. The City expects its financial contribution for 2020 to be between $0 and $90,000; the final financial contribution will be determined based on which Bothell resources the Consortium chooses to use to support the work of the Consortium. The financial contribution is an unbudgeted General Fund expense and will likely require a budget amendment when the value is certain.

Staff Presenter/Department: Bruce Kroon, Fire

Policy Consideration and Connection to Council Goals:

The policy consideration for the City Council is should the City enter into an Interlocal Agreement authorizing the Bothell Fire Department to officially join the newly created North King County Training Consortium, dedicating limited staff to the program, and potentially committing up to $90,000 per year to the agency.

This Interlocal is consistent with the Council Public Safety Strategy goal of “Improving Training delivery and efficiencies”.

Background:

The City of Bothell Fire Department has a long history of collaborative working relationships with Woodinville Fire and Rescue as well as Northshore and Shoreline Fire Departments. The departments collectively align on many current practices and procedures relating to incident response, consistent training and similar equipment that help these departments respond more effectively and safely to incidents. Bothell Fire does an adequate job of providing mandatory basic fire training, as do our neighboring fire departments. However, because of the amount of time and resources required to perform this work, each agency has struggled to reach a higher standard of training delivery. In addition, by performing many of the same training activities, fire departments are duplicating a significant amount of effort. Elsewhere in the region, and the rest of the country, it has been clearly demonstrated that larger, well-led, and clearly organized training consortiums are more efficient and effective in meeting a fire department’s training needs. This may not result

in direct savings and in fact may be increase costs, it does however enable Training Officers to become subject matter experts in various skills thereby developing a higher levels of training.

Shoreline, Northshore and Bothell have been collaborating on a few training programs for over a decade delivering joint technical rescue training and Basic Life Support (BLS) training and education. These joint training activities are considered the standard for inter-agency joint training. A few years ago, Woodinville Fire Department joined the technical rescue training program and more recently BLS training. Both of these activities are currently being delivered seamlessly across the jurisdictions.

Since 2014 the East Metro Training Group (EMTG) has been delivering excellent, yet limited, training via Multi-Company Operations (MCO) a “Best Practices” manual and a Firefighter Academy. Last year, Training Officers from Bothell, Northshore, Woodinville and Shoreline came together to develop the delivery of North End Drills (NED). These are designed as short duration focused basic firefighting evolutions to help firefighters achieve the required training as a group. This approach to NEDs has been highly effective during this first year because companies practice skills and run through scenarios together, improving both their individual skills as well as agency interoperability.

In early 2019, based on the successes of these consolidated training programs, Bothell, Shoreline, Northshore and Woodinville departments began discussions about creating an official, independent training consortium with the goal of delivering enhanced safety and training programs.

Previous City Actions:

- *March 15, 1999 – City Council approved an Interlocal Agreement for the Fire Department to join training efforts with Northshore Fire Department.*

- *March 17, 2003 – City Council approved an Interlocal Agreement for the Fire Department to expand the cooperative and coordinated training activities and administration to include both Northshore and Shoreline Fire Department.*
- *October 21, 2014 – City Council approved an Interlocal Agreement for the Fire Department to join eight eastside agencies that formed the existing East Metro Training Group.*

Discussion:

As discussed in the Background section of this Agenda Bill, Fire Departments are required to provide firefighters with numerous and continuous trainings to prepare them to effectively and safely handle a variety of emergency situations. These mandatory trainings involve developing firefighter skills to the highest level for not only fighting fires but also handling medical emergencies, performing rescues, and treating the injured. Strong skills significantly improve a firefighter’s ability to respond to emergencies, thereby providing the highest level of care and response to our community and protecting the firefighters own safety and that of other first responders.

Based on the successes of several consolidated training programs over the past decade, Bothell, Shoreline, Northshore and Woodinville departments began discussions about creating an official, independent training consortium to deliver enhanced safety and training programs, with the goal of increasing efficiencies and reducing costs. After evaluating a variety of consolidated training programs, the four departments have agreed to Training Consortium established by an Interlocal Agreement (ILA). The Training Consortium is designed to provide a more efficient regional training program, from planning to delivery of trainings, resulting in the highest level of training possible with the goal of enabling the four fire departments to work seamlessly together on emergency responses and in dangerous situations.

The proposed ILA creates an independent Training Consortium with the goal of improving the level of training offered to the firefighters in all participating agencies. The proposed ILA establishes an Oversight Board, that will formulate policies and procedures for the training program, annually review and approve the Training Consortium proposed budget, and determine the proportionate funding share for each member agency to support the approved budget. The Board will hire the Training Director and ensure the quality and quantity of training programs are delivered to the satisfaction of the member agencies. The Board will be comprised of Fire Chiefs from each member agency.

The Training Consortium will consist of a newly created training director, a battalion chief (BC), EMS officer, training officer from each jurisdiction, and administrative support. Members from each participating department in the Training Consortium has an opportunity to fill one of these positions. Bothell Fire Department has already committed to providing full time administrative support to the Training Consortium. This in-kind contribution reduces the City's financial contribution to the Training Consortium. It is anticipated that in the first year, a Bothell BC will fill the Training Consortium Battalion Chief position, making the cost of the ILA a net zero for Bothell.

In future years, as BCs are selected from other member agencies, Bothell's costs could increase to $90,000. However, it is anticipated that the Fire Department will experience some cost savings in both training delivery costs and overtime as a result of joining the Training Consortium, but at this time these savings cannot be quantified. It is anticipated that cost savings could be accomplished through reduced overtime because "make-up" trainings can be scheduled at any of the four departments, reducing the amount of time training personnel expend tracking down and scheduling firefighters who miss the initial trainings. Also, now that all four departments are on the same four platoon schedule, this too should reduce training delivery costs.

Each member agency will pay the salary and benefits, as well as conduct the performance reviews, for their members assigned to the Training Consortium. All other costs associated with the management and operations of the Training Consortium will be allocated based on the annual allocation determined by the Board. Shoreline Fire Department has been identified as the *Agency of Record* and will be responsible for all financial and records management. Northshore Fire District will provide office space at their facility in Kenmore.

Category: New Business

Attachments:

1. Interlocal Agreement establishing the North King County Training Consortium.

Recommended Action:

Approve the Interlocal Agreement for the creation of the North King County Training Consortium with the City of Bothell Fire Department, Woodinville Fire & Rescue and Northshore and Shoreline Fire Departments and direct the City Manager to execute the agreement as presented.

City Manager Approval: _____ Date: 12/10/2019

INTERLOCAL AGREEMENT
North King County Training Consortium

WHEREAS, the City of Bothell Fire Department, the Northshore Fire Department, Woodinville Fire & Rescue, and the Shoreline Fire Department, individually a "Party" and collectively the "Parties", each maintain and operate their own training divisions; and

WHEREAS, the Parties recognize that integrated, cross-jurisdictional training is a critical facet of firefighting duties and, pursuant to WAC 296-305, each Party is legally required to maintain an efficient and safe workforce; and

WHEREAS, the Parties desire to implement a consolidated training program which facilitates the highest level of service possible to citizens because it reduces costs by eliminating duplicative effort and expense while making the most effective use of combined resources; and

WHEREAS, a consolidated training division based on equal participation would provide the highest level of training possible while maintaining an economy of scale for the taxpayers; and

WHEREAS, the Parties herein desire to enter into an interlocal agreement to form the North King County Training Consortium ("Consortium") to jointly operate a training division pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW);

NOW THEREFORE, in consideration of the mutual promise and benefits contained herein, it is agreed by and between the Parties as follows:

Section 1. PURPOSE

The Parties enter into this Interlocal Agreement ("Agreement") to formally establish a Training Consortium to provide coordinated planning, programming, delivery, and documentation of firefighter and emergency medical technician training. This Agreement shall replace any previous agreements between the Parties related to consolidated training.

Section 2. THE PARTIES

1. As of the date of execution of this Agreement, the Parties to this Agreement are as follows:

Shoreline Fire Department	City of Bothell Fire Department
Northshore Fire Department	Woodinville Fire & Rescue

2. Any other fire protection district or City may, at a future date, request inclusion into the Consortium and become a Party to this Agreement pending the following:

A. The potential party agrees to be committed to the terms and conditions of this Agreement for the purposes for which this Agreement is promulgated;

B. The potential party agrees to pay the pro-rated share of the cost of service based upon the month it becomes a party to this Agreement;

C. The potential party must be approved by the Board by majority vote at a regular Board meeting; and

D. Evidence of the addition of a new party shall take the form of a written amendment to this Agreement.

Section 3. RESPONSIBILITIES OF THE PARTIES

1. Each Party to this Agreement agrees to the following participation levels and financial support, which may be modified or changed only with a unanimous vote of the Board:

   A. Financial Support – Each Party shall be responsible for contributing its portion of the Consortium costs which will be based on a per member allocation. Payments shall be made to the Agency of Record in one installment no later than February 1st of each year.

   B. Personnel Support – In addition to the financial support outlined above, each Party shall be responsible for providing one FTE, at the rank of Lieutenant or above, to be dedicated solely to the Consortium. These employees may be rotated in and out on not more than a biennial basis under normal circumstances. Nothing in this Agreement shall limit a Party from providing more resources to training either within its own organization or to support the Consortium.

   C. Guidelines – Each Party agrees to participate under the guidelines and policies jointly developed and approved by the Board.

Section 4. GOVERNANCE

1. An administrative entity, known as the North King County Training Consortium Oversight Board ("Board") is hereby established to administer this Agreement.

   A. Composition – The Board shall be composed of the Fire Chief or designee from each Party to this Agreement. Members of the Board shall elect by majority vote, after nominations at the first Board meeting, a Chair to serve as presiding officer of the Board.

   B. Chair – The Chair shall schedule the meetings of the Board, serve as presiding officer at Board meetings, gather information and prepare the agenda for

Board meetings. In the event the Chair is unwilling or unable to complete his or her term, nominations shall be accepted by the Board for a replacement Chair who shall be elected by majority vote of the Board and shall complete the term of the resigning Chair.

C. Meeting – The Board shall meet at least quarterly at a time and place to be determined by a majority of the Board or by the Chair. Except in exigent circumstances, at least one week's notice of a Board meeting shall be given to all members.

D. Voting – Each Party of the Board shall have an equal vote in its determinations. Adoption of any motion requires majority approval. The entire Board must be present to take action. In the event that a member is unable to attend, they may provide a proxy vote for a decision to be valid.

E. Duties – Subject to the terms of this Agreement, the Board shall have the responsibility for:

i. Creation and adoption of policy and procedures for the Consortium, as well as any guiding documents or contracts.

ii. Develop and adopt the annual Consortium budget. The Consortium budget shall be approved by the Board no later than October 1st of the preceding year.

iii. Review and approval of the Annual Consortium Work Plan to outline all anticipated training objectives, projects, and goals for the upcoming year. The Annual Consortium Work Plan shall be developed by December 1st of the preceding year.

iv. Appointment of a Training Director.

v. Hire and oversee all other personnel appointments within the Consortium.

vi. Approval and delivery of the Training Director's annual performance review.

vii. Create and approve the Annual Report by April 1st of the following year of the report.

2. Operational oversight shall be performed by an Operations Board.

A. Composition – The Operations Board shall be composed of the Operations Deputy Chiefs of each department and the Training Director. All Operations Board members shall be considered equal rank.

B. Meeting – The Operations Board shall meet at least quarterly, at a time and place to be determined by a majority of the Operations Board or by the Operations Board's elected chairperson.

C. Chair – The Operations Oversight Board Chair shall be elected pursuant to the procedure outlined in Section 4.1.B. and shall hold the same duties for the Operations Board.

D. Duties of Operations Board:

i. To identify the training objectives needed for emergency scene operations and recommend any changes in the scope of training to the Board.

ii. To provide direction and operational decision making for training procedures, documents, exercises or drills.

iii. To establish operational principles to guide the Training Director in daily management of the Consortium.

iv. To provide support and assistance to the Training Director in the operational oversight of the Consortium.

E. Voting – For operational issues necessitating formal direction or action by the Operations Board, each member of the Operations Board, excluding the Training Director, shall have one vote. The Operations Board shall endeavor to make decisions based on consensus. Adoption of any motion or action requires majority approval; however, decisions should be unanimous whenever possible. The entire Operations Board must be present to take action. In the event of a tie the Training Director shall cast the deciding vote.

3. Training Director

A. Appointment – The Training Director shall be appointed by the Board. The Party that employs the Training Director agrees to hire and staff the Training Director position. The Parties intend that the best candidate will be appointed by the Board to serve as the Training Consortium Director as contemplated by this Agreement.

B. Responsibilities - The Training Director shall be responsible for:

i. Preparation and administration of training division budgets.

ii. Staff supervision.

iii. Coordination of safety related issues.

iv. Planning and organization of the Consortium in alignment with organizational goals.

Section 5. FINANCES

1. Fund Established – Pursuant to RCW 39.34.030(4)(b), the Board is authorized to establish a special fund with the Agency of Record's Treasurer, to be designated as the North King County Training Consortium Operating Fund. Such fund will be used for the purpose of depositing the annual payments of each Party's annual monetary contributions or any other monies received by or on behalf of the Board. Any monies accumulated in said fund shall be utilized solely for the continued operation of the Consortium as determined by the Board.

2. Costs of Operation Other Than the Approved Operating Budget – All direct costs and expenses incurred from participation in the Consortium by each Party shall be paid for by that Party. Costs incurred for wages and benefits for employees' assigned duties within the Consortium shall be paid by the employing Party. Each Party shall maintain its own overtime budget to support training its personnel and has the sole authority over the amount and use. The operating budget may contain designated funds for the purposes of reimbursing agencies for the provision of instructors or support personnel above and beyond those personnel assigned to the Consortium.

3. Financial Best Practices – The Agency of Record shall provide the financial oversight of the Consortium in accordance with that Party's financial policies and best practices.

Section 6. AGENCY OF RECORD

1. Designated – Shoreline Fire Department shall be designated the Agency of Record under this Agreement.

2. Duties – In addition to its responsibilities as a Party to this Agreement, the Agency of Record shall:

    A. Maintain Books and Records – Maintain books, records and documents, which accurately reflect all direct costs associated with the performance of this Agreement. The Board shall have access to all books and records upon reasonable notice to the Agency of Record.

    B. Maintain Separate Fund, Send Invoices and Receive Payments from the Parties – The Agency of Record shall maintain a fund as called for in Section 5.1. and bill each Party accordingly for the costs and expenses approved by the Board under this Agreement.

    C. Maintain insurance records for each Party.

    D. Maintain all records and documents in accordance with Chapter 42.56 RCW.

E. If an employee is hired for the sole purpose of working for the Consortium, the Agency of Record shall be the employer of record for that employee.

3. Execution and Filing of Agreement – the Agency of Record shall ensure that this Agreement is executed by the Parties, and that a certified copy is filed with the King and Snohomish County Auditors, the City Clerks of any cities party to this Agreement pursuant to RCW 39.34.040.

Section 7. TITLE TO EQUIPMENT

Title to all equipment authorized to be purchased by the Board under this Agreement shall be in the name of the Agency of Record, subject only to the right therein of the participating Parties upon termination of this Agreement. Title to all equipment purchased by each Party shall be in the name of the Party purchasing the equipment.

Section 8. TERMINATION

1. The initial term of this Agreement shall be 10 years. Thereafter, the Agreement will automatically renew for one year periods unless terminated by agreement of the Parties pursuant to Section 8.3. below or in the event of the withdrawal under Section 10 by all but a single Party.

2. Upon termination of this Agreement by mutual consent of the Parties, the ownership interest of each Party in the then existing operating fund balance and other assets and equipment purchased hereunder and held by the Agency of Record pursuant to Section 7 shall be determined and divided among the parties by the following formula: total amount of assets divided by the total number of fire service uniformed employees currently employed by all the Parties, multiplied by the total number of fire service uniformed employees in each Party that is a party to the Agreement, shall equal the interest of that individual Party.

3. This Agreement may be terminated by consensus of a majority of the Parties, effective the end of any calendar year, upon giving written notice thereof to the other Parties by July 1 of the preceding year. In the event of a termination under this paragraph any resources or equipment owned jointly under the Consortium shall be allocated among the Parties in the manner specified in Section 8.2. above.

4. If a Party consolidates with another municipal or local government entity through merger, annexation, or through the creation of a Regional Fire Authority, the consolidated entity shall become a Party to this Agreement and a successor in interest to the Party's interest on the effective date of the consolidation without any action by the remaining Parties, unless otherwise required.

Section 9. DISPUTE RESOLUTION

1. Prior to any other action, the Board shall meet and attempt to informally negotiate a resolution to any dispute arising under this Agreement.

2. If the Parties are unable to resolve the dispute through informal negotiation within 30 days, the Parties to such dispute shall promptly engage in mediation with a professional mediator located in Snohomish County or King County, Washington, with each Party to the dispute paying a proportionate share of the costs thereof, and bearing their own attorney and consultant fees. If the dispute is still unresolved, any Party may initiate legal proceedings in any court of competent jurisdiction unless the Parties agree to submit the dispute to arbitration pursuant to Section 9.3.

3. The Parties to a dispute may unanimously agree to submit any dispute to binding arbitration according to the procedures of the Superior Court Rules for Mandatory Arbitration, including the Local Mandatory Arbitration Rules of the King County Superior Court, King County, Washington, as amended, unless the Parties agree in writing to an alternative dispute resolution process. The arbitration shall be before a disinterested arbitrator with all Parties to the dispute sharing equally in the cost of the arbitrator. The location of the arbitration shall be mutually agreed or established by the assigned Arbitrator, and the laws of Washington will govern its proceedings. Each Party shall be responsible for its own costs in preparing for and participating in the arbitration, including expert witness fees and reasonable attorney's fees.

4. Unless otherwise agreed in writing, this dispute resolution process shall be the sole, exclusive and final remedy to or for any Party for any dispute regarding this Agreement, and its interpretation, application or breach, regardless of whether the dispute is based in contract, tort, any violation of federal law, state statute or local ordinance or for any breach of administrative rule or regulation and regardless of the amount or type of relief demanded.

Section 10. WITHDRAWAL

1. Any Party may withdraw from this Agreement without terminating the entire Agreement by giving the Board 365 days' prior written notice. Said withdrawal shall become effective at the end of the 365-day period.

2. Any Party withdrawing from this Agreement shall be responsible for a prorated share of its annual obligation for costs and expenses incurred prior to termination.

3. In the event a Party withdraws pursuant to this Section 10, but the remaining Parties continue the Agreement, the Party that terminated its participation shall be considered a withdrawing Party that is not entitled to any refund of its prior contributions, but it shall be entitled to reimbursement of its depreciated share of any jointly owned Consortium resource(s) and return of any equipment or property owned by the withdrawing Party and used by the Consortium under this Agreement.

Section 11. LIABILITY AND INDEMNIFICATION

Each Party is individually responsible for its own employees' acts and omissions arising out of the performance of this Agreement. Further, each of the Parties agrees to indemnify, defend and hold harmless the other parties, their officers, officials, agents, employees, and volunteers from any and all claims, costs, including reasonable attorneys' fees, losses and judgments arising out of the negligent acts or omissions of that party's officials, officers, agents, employees, and volunteers in connection with the performance of this Agreement.

Section 12. INSURANCE

Each of the Parties hereby agrees to obtain and maintain, for the duration of this Agreement, all insurance necessary to cover the liability described in Section 11 – Liability and Indemnification. Each Party shall provide the Consortium with a Certificate of Liability Insurance or Evidence of Coverage, which the Agency of Record shall maintain on file, provided that any Party that is self-insured will provide a letter of self-insurance as evidence of coverage.

Section 13. MODIFICATION

No changes or modifications of this Agreement shall be valid or binding upon any of the Parties to this Agreement unless such changes or modifications are in writing and executed by all of the Parties.

Section 14. NOTICES

All notices required to be given under this Agreement shall be delivered to the Board at the address of the Agency of Record. Notices sent by registered mail shall be deemed served when deposited in the U.S. mail.

Section 15. INTEGRATION

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

Section 16. SEVERABILITY

Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

Section 17. THIRD PARTY BENEFICIARY

None of the provisions contained in this Agreement is intended by the Parties, nor shall any be deemed, to confer any benefit on any person not a party to this Agreement.

Section 18. EFFECTIVE DATE

1. This Agreement shall become effective following the occurrence of all of the following actions:

    A. Approval of the Agreement by the official action of the governing bodies of each of the Parties hereto;

    B. Signing of the Agreement by the duly authorized representative of each of the Parties hereto;

    C. The filing of a copy of this Agreement with the following public officials;

        i. The City Clerks of the participating cities hereto; and

        ii. The King County and Snohomish County Auditors.

IN WITNESS WHEREOF, the undersigned public agencies have executed this Agreement of the date and year set forth below.

CITY OF BOTHELL FIRE DEPARTMENT

APPROVED AS TO FORM:

_____ _____

Jennifer Phillips, City Manager Paul Byrne, City Attorney

Date:_____

ATTEST/AUTHENTICATED:

_____

Laura Hathaway, City Clerk

NORTHSHORE FIRE DEPARTMENT

APPROVED AS TO FORM:

_____ _____

By: District Counsel

Date:_____

WOODINVILLE FIRE & RESCUE

APPROVED AS TO FORM:

_____ _____

By: Jeff Ganson, District Counsel

Date:_____

SHORELINE FIRE DEPARTMENT

APPROVED AS TO FORM:

_____ _____

By: District Counsel

Date:_____

Bothell City Council
AGENDA BILL

Meeting Date: December 3, 2019 Action ☒ No Action ☐ AB #: 19-223

Subject: Salary Commission Ordinance

Budget Impact/Source of Funds: NA

Staff Presenter/Department: Mathew Pruitt, HR Director

Policy Consideration and Connection to Council Goals:

1. Should the salary commission consider the Deputy Mayor position separately from other councilmembers and the Mayor when reviewing council compensation?
2. Should the commission perform its work every two years as part of the budget process?
3. Should salary commission members be appointed to staggered four year terms in even calendar years?

Background:

Chapter 2.92 of the Bothell Municipal Code creates a salary commission for the purpose of reviewing the compensation of city councilmembers every five years. The commission met in 2019 and performed its duties in accordance with Chapter 2.92 after reviewing data from five comparable city organizations. Council compensation was immediately changed per the commission's recommendation. During that process the commission also requested staff recommend changes to Chapter 2.92 regarding the Deputy Mayor position, when the commission performs their work, and when the commission is appointed and for how many years. Their recommendations are based upon how salary commissions operate in other comparable city organizations.

Previous City Actions:

2009: City Council approved Ordinance 2009 creating a Salary Commission (2009-2009).

Discussion:

- **Add the Deputy Mayor position:** The salary commission does not believe that Chapter 2.92 identifies the Deputy Mayor position separately from councilmembers and the Mayor. Chapter 2.92 specifically states: "The commission shall have the duty to review the salaries paid by the city to the mayor and city council." After staff discussed this matter with the City Attorney the commission adopted a salary table that paid the Deputy Mayor the same as other councilmembers. The commission believes the Deputy Mayor is a separate position with distinct responsibilities and should be compensated separately from other councilmembers, and the Mayor. If all of the proposed changes are approved by council than the commission plans to submit a new salary table that includes a separate Deputy

Mayor position in 2020. It is unclear as to why the Deputy Mayor position was not included in the ordinance previously passed by council.

- **Salary Commission meets every two years during the budget process:** In 2015, the previous salary commission adopted a cost of living adjustment for city councilmembers which was in effect until the 2019 salary commission made changes in accordance with Chapter 2.92. After looking at how salary commissions operated in comparable city organizations, the 2019 commission felt that it was more consistent to not provide councilmembers a cost of living adjustment but to instead review their compensation on a more regular basis. Furthermore, the current commission was concerned about the City's financial status and thought that city council compensation should mirror decisions that were being made about employee compensation as part of the budget process. If the proposal is approved by council, the salary commission will meet every two years as part of the budget process and any increase will not go into effect until January 1 of the following year. Although this change will require staff to work with the salary commission every two years rather than five years, a more consistent and regular process will also create efficiencies.

- **Salary commissioners appointed to staggered four year terms every even calendar year.** To effectively implement the change that the salary commission meet every two years, the 2019 commission is proposing that members be appointed to staggered four year terms every even calendar year. If this change is approved, the term of one of the current commission members will end on December 31, 2021 with a new member being appointed in 2022, and the term of two of the current commission members will end on December 31, 2023 with two new members being appointed in 2024. The commission believes that staggered terms will allow new members to be on the commission with at least one other member who has been through the process. The commission believes that this change is more consistent with other comparable city organizations.

Category: New Business

Attachments:

1. Chapter 2.92 creating a salary commission.
2. Proposed Ordinance.

Recommended Action:

Adopt the ordinance as presented.

City Manager Approval: _____ Date: 12/09/2019

Chapter 2.92
SALARY COMMISSION

Sections:

2.92.010 Created – Membership.
2.92.020 Vacancies.
2.92.030 Removal.
2.92.040 Procedure – Duties.
2.92.050 Referendum.

2.92.010 Created – Membership.

A. There is created a salary commission for the city. The commission shall consist of three members, to be appointed by the mayor with the approval of the city council.

B. A member of the commission shall serve their term upon appointment and council confirmation until the salary review is complete and a salary schedule has been filed with the city clerk or until determination is made that no salary adjustment is appropriate. A member shall serve without compensation, and shall be a resident of the city.

C. Every five years, beginning in 2009, a new salary commission shall be appointed and the commission shall begin a new salary review as provided herein.

D. No member of the commission shall be appointed to more than two terms.

E. A member of the commission shall not be an officer, official, or employee of the city or an immediate family member of an officer, official, or employee of the city. For purposes of this section, “immediate family member” means the parents, spouse, siblings, children, or dependent relatives of an officer, official, or employee of the city, whether or not living in the household of the officer, official, or employee. (Ord. 2009 § 1, 2009).

2.92.020 Vacancies.

In the event of a vacancy in the office of commissioner, the mayor shall appoint, subject to approval of the city council, a person to serve the unexpired portion of the term of the expired position. Prior to consideration for appointment, each candidate shall submit a written request to be considered which shall be reviewed by the mayor and council members prior to appointment to the commission. (Ord. 2009 § 1, 2009).

2.92.030 Removal.

A member of the commission shall only be removed by the city council from office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office, or for a disqualifying change of residence. (Ord. 2009 § 1, 2009).

2.92.040 Procedure – Duties.

A. The commission shall have the duty to review the salaries paid by the city to the mayor and city council. If after such review the commission determines that the salary paid to the mayor or city council should be increased or decreased, the commission shall file a written salary schedule with the city clerk indicating the increase or decrease in salary.

B. For purposes of this chapter, “salary” or “salaries” means any fixed compensation paid or provided periodically for work or services and includes, but is not limited to, wages and medical or other benefits. This

definition expressly excludes any expenses paid or reimbursed on behalf of the mayor or council member for training and travel expenses.

C. Every five years, as provided in BMC 2.92.010(C), the commission shall convene, complete its review, and file its schedule of salaries for the mayor and city council with the city clerk within 90 days of the appointment of the commission. The 90-day review time schedule may be extended upon request by the commission and approval by the city council.

D. Meetings may be scheduled by the chair of the commission or by a majority vote of the commission. Meetings shall be conducted in the Bothell City Council Chambers. Three members of the commission shall constitute a quorum and are necessary for conducting a meeting. Meetings shall be conducted pursuant to Robert's Rules of Order, Newly Revised 10th Edition.

E. All meetings of the commission shall be open to the public. Prior to a commission vote to increase or decrease salaries, at least one of the meetings shall include a public hearing to provide an opportunity for the public, the mayor, deputy mayor, and/or city council members to address the commission. Citizen comments shall be conducted in a manner consistent with those heard at regularly scheduled meetings of the council. The mayor, deputy mayor, and/or city council members shall only address the commission regarding commission business at a regularly scheduled commission meeting or by public written comment.

F. The decision to raise or lower salaries requires an affirmative vote of at least a majority of the whole membership of the commission.

G. Any increase or decrease in salary shall become effective and incorporated into the city budget without further action of the city council or the commission.

H. Salary increases established by the commission shall be effective as to all city elected officials, regardless of their terms of office.

I. Salary decreases established by the commission shall become effective as to incumbent city elected officials at the commencement of their next subsequent terms of office.

J. Any adjustment of salary by the commission shall supersede any city ordinance related to the budget or to the fixing of salaries. (Ord. 2009 § 1, 2009).

2.92.050 Referendum.

A. Salary increases and decreases shall be subject to referendum petition in the same manner as an ordinance upon filing of such petition with the city clerk within 30 days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

B. Referendum measures under this section shall be submitted to the voters of the city at the next following general or municipal election occurring 30 days or more after the petition is filed, and shall be otherwise governed by the provisions of the Washington State Constitution, Chapter 1.12 BMC, or laws generally applicable to referendum measures. (Ord. 2009 § 1, 2009).

The Bothell Municipal Code is current through Ordinance 2281, passed August 13, 2019.

Disclaimer: The City Clerk's Office has the official version of the Bothell Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON AMENDING CHAPTER 2.92 OF THE BOTHELL MUNICIPAL CODE REGARDING THE SALARY COMMISSION.

WHEREAS, Chapter 2.92 of the Bothell Municipal Code (BMC) establishes a salary commission for the purpose of determining city council compensation in accordance with RCW 35.21.015.

WHEREAS, in accordance with Chapter 2.92 the Mayor appointed three members to the Salary Commission that were approved by the city council in 2019.

WHERAS, the salary commission met with Human Resources staff to review city council compensation of comparable organizations and recommended an increase to city council compensation that was implemented immediately in accordance with Chapter 2.92.

WHEREAS, the salary commission also asked staff to recommend changes to Chapter 2.92 based upon their research of comparable organizations.

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

Section 1. Section 2.92.010 of the Bothell Municipal Code is hereby amended as follows, with new text shown by underline and deleted text shown in ~~strikethrough~~; all other provisions of these sections shall remain unchanged and in full force.

2.92.010 Created – Membership.

A. There is created a salary commission for the ~~c~~City. The commission shall consist of three members, to be appointed by the ~~m~~Mayor with the approval of the ~~c~~City ~~c~~Council.

B. Appointments will be made in every even calendar year and shall be staggered so all appointments are not made in the same year. ~~A member of the commission shall serve their term upon appointment and council confirmation until the salary review is complete and a salary schedule has been filed with the cCity cClerk or until determination is made that no salary adjustment is appropriate.~~ A member shall serve without compensation, and shall be a resident of the city.

C. Commissioners shall serve no more than two consecutive four-year terms with the exception of commissioners who are serving at the time this ordinance is enacted, who may serve up to five years for their first term. ~~Every five years, beginning in 2009, a new salary commission shall be appointed and the commission shall begin a new salary review as provided herein.~~

D. ~~No member of the commission shall be appointed to more than two terms.~~

~~E.~~ A member of the commission shall not be an officer, official, or employee of the ~~c~~City or an immediate family member of an officer, official, or employee of the ~~c~~City. For

purposes of this section, "immediate family member" means the parents, spouse, siblings, children, or dependent relatives of an officer, official, or employee of the ~~c~~City, whether or not living in the household of the officer, official, or employee.

Section 2. Section 2.92.020 of the Bothell Municipal Code is hereby amended as follows.

2.92.020 Vacancies.

In the event of a vacancy in the office of a commissioner, the ~~m~~Mayor shall appoint, subject to approval of the ~~c~~City ~~c~~Council, a person to serve the remaining term of the vacant ~~unexpired portion of the term of the expired~~ position. Prior to consideration for appointment, each candidate shall submit a written application or request in the form determined by the City Clerk's Office to be considered, which shall be reviewed by the ~~m~~Mayor and ~~c~~Council~~-~~members prior to appointment to the commission.

Section 3. Section 2.92.030 of the Bothell Municipal Code is hereby amended as follows.

2.92.030 Removal.

A member of the commission shall only be removed from office by the ~~c~~City ~~c~~Council ~~from office~~ for cause of incapacity, incompetence, neglect of duty, ~~or~~ malfeasance in office, or for a disqualifying change of residence.

Section 4. Section 2.92.040 of the Bothell Municipal Code is hereby amended as follows.

2.92.040 Procedure – Duties.

A. The commission shall have the duty to review the salaries paid by the city to the ~~m~~Mayor, Deputy Mayor, and ~~c~~City ~~c~~Council. If after such review the commission determines that the salary paid to the ~~m~~Mayor, Deputy Mayor, or ~~c~~City cCouncil should be increased or decreased, the commission shall file a written salary schedule with the ~~c~~City ~~c~~Clerk indicating the increase or decrease in salary.

B. For purposes of this chapter, "salary" or "salaries" means any fixed compensation paid or provided ~~periodically~~ for work or services and includes, but is not limited to, wages and medical or other benefits. This definition expressly excludes any expenses paid or reimbursed on behalf of the ~~m~~Mayor, Deputy Mayor, or ~~c~~Council~~-~~members for training and travel expenses.

C. Every even calendar ~~five~~ years~~, as provided in BMC~~ ~~2.92.010(C),~~ the commission shall ~~convene,~~ complete its review~~,~~ and file its schedule of salaries for the ~~m~~Mayor, Deputy Mayor, and ~~c~~City ~~c~~Council with the ~~c~~City ~~c~~Clerk's Office within 90 days of convening. ~~the appointment of the commission.~~ The 90-day review time schedule may be extended upon request by the commission and approval by the ~~c~~City ~~c~~Council.

D. Meetings may be scheduled by the chair of the commission or by a majority vote of the commission. Meetings shall be conducted ~~in the~~ at Bothell City Hall ~~Council Chambers.~~ All three commissioners must be present in order for the commission to conduct business. ~~Three members of the commission shall constitute a quorum and are necessary for conducting a meeting. Meetings shall be conducted pursuant to Robert's Rules of Order, Newly Revised 10th Edition.~~

E. All meetings of the commission shall be open to the public. Prior to a commission vote to increase or decrease salaries, at least one of the meetings shall include a public hearing to provide an opportunity for the public, the ~~m~~Mayor, ~~d~~Deputy ~~m~~Mayor, and/or ~~c~~City ~~c~~Council members to address the commission in person or by public written comment. ~~Citizen comments shall be conducted in a manner consistent with those heard at regularly scheduled meetings of the council. The mayor, deputy mayor, and/or city council members shall only address the commission regarding commission business at a regularly scheduled commission meeting or by public written comment.~~

F. The decision to raise or lower salaries requires an affirmative vote of at least a majority of the whole membership of the commission.

G. Any increase or decrease in salary shall become effective on January 1 of the following year and be incorporated into the city budget without further action of the ~~c~~City ~~c~~Council or the commission.

H. Salary increases established by the commission shall be effective as to all city elected officials, regardless of their terms of office.

I. Salary decreases established by the commission shall become effective as to incumbent city elected officials at the commencement of their next subsequent terms of office.

J. Any adjustment of salary by the commission shall supersede any city ordinance related to the budget or to the fixing of salaries.

Section 5. Section 2.92.050 of the Bothell Municipal Code is hereby amended as follows.

2.92.050 Referendum.

A. Salary increases and decreases shall be subject to referendum petition in the same manner as an ordinance upon filing of such petition with the ~~c~~City ~~c~~Clerk's Office within 30 days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

B. Referendum measures under this section shall be submitted to the voters of the ~~c~~City at the next following general or municipal election occurring 30 days or more after the petition is filed, and shall be otherwise governed by the provisions of the Washington State Constitution, Chapter 1.12 BMC, or laws generally applicable to referendum measures.

Section 6. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. EFFECTIVE DATE. This ordinance is subject to referendum and shall take effect thirty (30) days after passage and publication of an approved summary thereof consisting of the title.

Section 8. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

APPROVED

_____
ANDREW J. RHEAUME,
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY,
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE,
CITY ATTORNEY

SUMMARY OF ORDINANCE NO. _____(2019)

City of Bothell, Washington

On the _____ day of _____, 2019, the City Council of the City of Bothell passed Ordinance No. _____ (2019). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING CHAPTER 2.92 OF THE BOTHELL MUNICIPAL CODE REGARDING THE SALARY COMMISSION.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2019)

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Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☒ No Action ☐ AB #: 19-224

Subject: Amendment of BMC Table 20.02.155A and Ratification of Plan Review Fees Collection

Budget Impact/Source of Funds: N/A

Staff Presenter/Department: Paul Byrne, City Attorney
David Swasey, Community Development

Policy Considerations and Connection to Council Goals:

Whether to correct inadvertent omissions in the 2018 and 2019 fee schedules for certain permits and ratify previous collection of those fees.

This action supports the Council Goal of Fiscal Responsibility and Stability.

Background:

In 2017, FCS Group ("FCS") performed a fee study for the City's Development Services. As part of FCS's recommended updates, they suggested an entirely new fee structure for mechanical and plumbing permit and plan review services. When this fee study was adopted in July 2017 pursuant to Resolution No. 1365, inadvertent changes were made to the fee schedule, which resulted in key language from the plan review fee for building, and mechanical and plumbing permits being omitted.

In December 2017, the 2018 fee schedule was adopted via Resolution 1370. The inadvertent omissions to the plan review fee and footnotes from the proposed fee schedule were not caught, and so were approved along with the rest of the changes to the fee schedule.

In December 2018, the 2019 fee schedule was adopted under Resolution 1383. The amendments to the fee schedule simply adjusted the fees for CPI. As this fee schedule contained no other changes to the previous fee schedule, excluding CPI increases, the same omissions from the 2018 fee schedule were included within the 2019 fee schedule.

These omissions were discovered by the City in August 2019, whereupon staff also reviewed the municipal code to determine whether it also contained the inadvertent changes. Upon this review, it was determined that the code itself was missing key language relating to plan review fees, and there are inconsistencies in the "other fees" table located in Bothell Municipal Code ("BMC") 20.02.155A. It appears that sometime between 2007 and 2019, the BMC was accidently amended such that the plan review fee was eliminated. Staff reviewed all ordinances that amended BMC Chapter 20.02. Ordinance No. 1986, from 2007, contains the correct charge for plan review fees (65% of the permit fee), however all subsequent ordinances do not amend this code section. Accordingly, it appears that there was no legislative intent to remove the plan review fees, rather it was likely an omission on the part of a code drafter or the code publisher in subsequent ordinances.

After discovering these inconsistencies, the City consulted outside legal counsel to evaluate the situation, analyze the available options that could remedy the situation, and make recommendations for corrective action that would eliminate problems going forward and minimize the City's consequential risks and liabilities.

Previous City Actions:

- Ordinance No. 1986 (2007): Council approval of the adoption of the state building code amending BMC Chapters 20.02, 20.04, and 20.08.
- Resolution No. 1365 (2017): Council approval of FCS Group's cost recovery analysis and fee schedule recommendations.
- Resolution No. 1370 (2017): Council approval of 2018 Fee Schedule, implementing FCS Group's recommendations.
- Resolution No. 1383 (2018): Council approval of 2019 Fee Schedule.

Discussion:

When the omissions were discovered by staff, the city attorney and outside legal counsel reviewed the situation and recommended adopting the fee schedule for 2020 with the needed amendments to insert the correct cost of the plan review fees for the building permit, and plumbing and mechanical permit. Additionally, they recommended adopting two additional ordinances, one to ratify the collection of the plan review fee without the proper code language, and one to amend the BMC to insert the proper language.

Category: New Business

- Staff Presentation by Paul Byrne, City Attorney
- Council Deliberations
- Motion to Consider Recommended Action
- Council Vote on Motion to Approve

Attachments:

1. Proposed Ordinance – ratifying collection of the plan review fees.
2. Proposed Ordinance – revising BMC 20.02.155A to re-insert missing code language.

Recommended Action:

There are two separate actions required:

1. Adopt the attached ordinance ratifying collection of the plans review fees
2. Adopt the attached ordinance revising BMC 20.02.155A

City Manager Approval: _____ Date: 12/092019

Ordinance No. ____ (2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, RATIFYING IMPLEMENTATION AND COLLECTION OF PLAN REVIEW AND OTHER BUILIDNG AND DEVELOPMENT FEES AND CHARGES FROM JANUARY 1, 2007 TO DATE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 20.02.155 of the Bothell Municipal Code (BMC) outlines the fees required for development permits within the City of Bothell (City); and

WHEREAS, as of Ordinance No. 1986 (2007), BMC Table 20.02.155A included a plan review fee that was 65% of the cost of the associated permit; and

WHEREAS, sometime between 2007 and 2019, BMC Table 20.02.155A was unknowingly, inadvertently and erroneously altered without authority and contrary to the City's knowledge and intent, resulting in the omission, deletion and/or alteration of the plan review fee, BMC text and associated footnotes; and

WHEREAS, there was no legislative intent for such omissions, deletions and/or alterations, all of which occurred without the City's knowledge; and

WHEREAS, during such period the City continued to impose and collect plan review and other fees and charges in accordance with its understanding of the correct and applicable fees and charges; and

WHEREAS, the Council is taking curative action contemporaneously with this Ordinance to correct and restore the BMC code, text, tables, fees and other related components to its intended status and provisions; and

WHEREAS, in situations as described above the Council has authority under the law to ratify and validate the City's past actions taken in accordance with the BMC as it then presumed to be applicable, and to ratify and validate that which it could previously have lawfully authorized; and

WHEREAS, the Council has lawful authority under Chapter 19.27 RCW to implement and collect building permit and plan review fees and charges; and

WHEREAS, the Council finds it to be in the public interest to exercise such authority to ratify and validate the City's implementation and collection of plan review fees and other charges in order to effectuate state law and the Council's legislative intent and stated goal of assuring recovery of appropriate costs, fees and other charges for City development services provided to the public;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL ORDAINS AS FOLLOWS:

Section 1. The City Council adopts the foregoing recitals as its findings and conclusions concerning the matters described therein, also intending thereby to provide a record of the facts, issues and process involved in its consideration and correction of the code-related problems and previous City actions described above.

Section 2. The City Council ratifies the City's implementation and collection of plan review fees and other charges made from January 1, 2007 to the effective date of the curative companion Ordinance No. ____ adopted by the Council contemporaneously herewith, and declares such actions to have been taken in good faith and without knowledge of the underlying inconsistency of the code, and to be valid exercises of City authority consistent with law.

Section 3. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionally of any other section, sentence, clause, or phrase of this ordinance.

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

Section 5. This ordinance, being an exercise of a power specifically delegated to the City's legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication in accordance of law.

ADOPTED by the Bothell City Council this 3rd day of December 2019.

_____
MAYOR, ANDREW J. RHEAUME

ATTEST:

By: _____
CITY CLERK, LAURA HATHAWAY

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY, PAUL BYRNE

SUMMARY OF ORDINANCE NO. ____

of the City of Bothell, Washington

On December 3, 2019, the City Council of the City of Bothell, Washington, approved Ordinance No. ___, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, RATIFYING IMPLEMENTATION AND COLLECTION OF PLAN REVIEW AND OTHER BUILIDNG AND DEVELOPMENT FEES AND CHARGES FROM JANUARY 1, 2007 TO DATE; AND PROVIDING FOR AN EFFECTIVE DATE

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of December 3, 2019.

_____
CITY CLERK, LAURA HATHAWAY

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Ordinance NO. XXXX (2019)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON,
AMENDING BOTHELL MUNICIPAL CODE SECTION 20.02.155A, ENTITLED
CONSTRUCTION ADMINISTRATION CODE – FEES,
TO RE-ESTABLISH PLAN REVIEW FEES AND OTHER CHARGES;
AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 20.02.155 of the Bothell Municipal Code (BMC) outlines fees and other charges required for development permits within the City of Bothell (City); and

WHEREAS, BMC Table 20.02.155A should include a fee for plan review, which is 65% of the cost of the associated permit; and

WHEREAS, BMC Table 20.02.155A was inadvertently, unknowingly, or erroneously altered by scrivener's or other actions that deleted, omitted and/or altered plan review fees, other charges, and associated text and footnotes; and

WHEREAS, the Council has adopted companion ordinance No. ____ contemporaneously with this ordinance, which explains said situation in detail and ratifies prior City actions related thereto; and

WHEREAS, the Council now take the associated curative action to amend the BMC to restore the intended plan review fees and other charges, including related text and footnotes, thus effectuating state law and the Council's legislative intent and stated goal of assuring recovery of appropriate costs, fees and other charges for City development services provided to the public;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL ORDAINS AS FOLLOWS:

Section 1. The City Council adopts the foregoing recitals as its findings and conclusions concerning the matters described therein, also intending thereby to provide a record of the facts, issues and process involved in its consideration and correction of the code-related problems and previous City actions described above.

Section 2. Table A of the Bothell Municipal Code Section 20.02.155A is hereby amended and adopted as follows:

TABLE 20.02.155 A – BUILDING PERMIT FEES

TOTAL VALUATION[1]	FEE
$1.00 to $500.00	$28.50
$501.00 to $2,000	$28.50 for the first $500.00 plus $3.65 for each additional $100.00, or fraction thereof, to and including $2,000

TABLE 20.02.155 A – BUILDING PERMIT FEES

$2,001 to $25,000	$83.00 for the first $2,000 plus $16.80 for each additional $1,000, or fraction thereof, to and including $25,000
$25,001 to $50,000	$470.00 for the first $25,000 plus $12.00 for each additional $1,000, or fraction thereof, to and including $50,000
$50,001 to $100,000	$772.50 for the first $50,000 plus $8.40 for each additional $1,000, or fraction thereof, to and including $100,000
$100,001 to $500,000	$1,192.50 for the first $100,000 plus $6.75 for each additional $1,000, or fraction thereof, to and including $500,000
$500,001 to $1,000,000	$3,878.50 for the first $500,000 plus $5.75 for each additional $1,000, or fraction thereof, to and including $1,000,000
$1,000,001 and up	$6,730.50 for the first $1,000,000 plus $4.50 for each additional $1,000, or fraction thereof

Other Fees[3 and 4]:	
1. Inspections outside of normal business hours (per hour)[~~3~~5]	$163.00
2. Re-inspection fee[~~3~~,~~-4~~5]	$163.00
3. Inspection for which no fee is specifically indicated (per hour)[~~3~~5]	$163.00
4. Additional plan review required by changes, additions or revisions (per hour)[3]	$163.00
5. Re-roof (single-family residence)[~~3~~]	$125.00
6. Use of outside consultants for plan checking or inspections: Actual costs[2],-[4]	Hourly
7. ~~Use of outside consultants for plan checking or inspections: Actual costs~~[4] Mobile home replacement/installation	$291.00
8. ~~Use of outside consultants for plan checking or inspections: Actual costs~~[4] Moved Building (pre-move inspection)	$259.00

1 Valuation is determined based on the estimated cost submitted by the applicant, or the data contained in the latest edition of the Building Safety Journal, whichever results in a higher valuation.

2 Actual costs include fees for consultant services, plus administrative and overhead costs.

3 Plan review fee is equal to 65% of the permit. It includes the initial plan review and two re-reviews. Any subsequent reviews after the third review will result in a $163.00/hour charge for additional review services.

4 For all permits, plan reviews, revisions, reinspection fees, and other inspections, a five percent technology surcharge is applied to the total fee for services.

5 Inspection services include one initial inspection for each type of inspection and/or area to be inspected (if inspected in phases/sections), and one reinspection to address items requiring correction during the initial inspection. If items are not completed at the reinspection, the

inspector may issue a reinspection fee for any subsequent inspections necessary to address the remaining items. The inspector may also issue a reinspection fee if a project has requested an inspection and is not ready at the time of inspection. In instances where reinspection fees have been assessed, no additional inspection of the work shall be provided by the city until the required fees are paid.

Section 3. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionally of any other section, sentence, clause, or phrase of this ordinance.

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

Section 5. This ordinance, being an exercise of a power specifically delegated to the City's legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication in accordance of law.

ADOPTED by the Bothell City Council this 3rd day of December 2019.

_____
MAYOR, ANDREW J. RHEAUME

ATTEST:

By: _____
CITY CLERK, LAURA HATHAWAY

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY, PAUL BYRNE

SUMMARY OF ORDINANCE NO. ____

of the City of Bothell, Washington

On December 3, 2019, the City Council of the City of Bothell, Washington, approved Ordinance No. ___, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON,
AMENDING BOTHELL MUNICIPAL CODE SECTION 20.02.155A, ENTITLED
CONSTRUCTION ADMINISTRATION CODE – FEES,
TO RE-ESTABLISH PLAN REVIEW FEES AND OTHER CHARGES;
AND PROVIDING FOR AN EFFECTIVE DATE

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of December 3, 2019.

_____
CITY CLERK, LAURA HATHAWAY

Bothell City Council
AGENDA BILL

Meeting Date: December 17, 2019 Action ☐ No Action ☒ AB #: 19-225

Subject: Quarterly Financial & Levy Update – 3rd Quarter 2019

Budget Impact/Source of Funds: None

Staff Presenter/Department: Erin Leonhart, Public Works Director, Chris Bothwell, Finance Director, Carly Joerger, Public Safety Levy Coordinator

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Connection to Council Goals:

This report is connected with the Council Goals of Public Safety Strategy and Fiscal Responsibility and Stability.

Background:

The City Council receives quarterly reports from staff on three items of significance to the City Council and the Community:

- Safe and Secure Bothell,
- Safe Streets and Sidewalks, and
- Interim financial reports.

The purpose of these staff reports is to inform the Council and the Community regarding progress made in the corresponding period towards goals and commitments and to provide periodic updates on related matters. Each of the above reports is posted to the City's website for easy accessibility by interested parties.

Each of the three underlying programs, including the biennial budget, is well underway at the conclusion of the second quarter of 2019. Staff has combined the presentation of these quarterly updates for increased efficiency.

Previous City Actions:

- June 28, 2016 – Council Approves Safe Streets and Sidewalks Levy Measure for November 2016 Ballot
- June 19, 2018 - Council Approves Public Safety Levy and Bond Measures for November 2018 Ballot
- March 5, 2019 - Council Approves $2 million in loans from Utility Funds to initiate work on implementing the Public Safety Levy and Bond.
- April 2, 2019 – Council Approves Purchasing Specialist Position, 1/3 paid for with Levy funds, and receives updates on Public Safety Levy implementation costs.

- July 2, 2019:
    - Council receives first quarter updates on both Levies and the Capital Bond and receives Public Safety Levy Project Plan
    - Council authorizes Professional Service Agreement Supplement #1, Phase 2 with OAC Service, Inc. to provide project/construction management services for replacement of Fire Stations 42 and 45 through April 2020
    - Council authorizes purchase of three vehicles for Safe and Secure Levy-funded positions

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Discussion:

Safe and Secure Bothell and Safe Streets and Sidewalks programs are progressing on schedule consistent with commitments made to the Community. Details of program activity can be found in the attached reports:

- Safe and Secure Bothell Third Quarter 2019 Update, and
- Safe Streets and Sidewalks Third Quarter 2019 Update.

Similarly, the actual financial results are generally consistent with the Adopted 2019-2020 Budget. Details can be found in the attached Third Quarter 2019 Financial Report.

Category: Discussion/Update Item

Staff Presentation by Erin Leonhart, Public Works Director, Chris Bothwell, Finance Director, and Carly Joerger, Public Safety Levy Coordinator

Council Discussion

Attachments:

1. Safe and Secure Bothell Levy - Quarterly Update Q3 2019
2. Safe Streets and Sidewalks Levy - Quarterly Update Q3 2019
3. Third Quarter 2019 Financial Report
4. Third Quarter Revenue and Expenditure Data

Recommended Action:

No action is requested this evening; however, Council is asked to receive the reports.

City Manager Approval: _____ Date: 12/09/2019

3rd Quarter 2019 Update

Investing in your streets and sidewalks

Passage of the Safe Streets & Sidewalks Levy in November 2016 brings over $4 million in annual funding for the City's transportation network for nine years. The priorities for funding are to:

- Improve the condition of major streets
- Construct sidewalks and crosswalks around schools
- Patch asphalt and repair and replace sidewalks
- Fully fund the Street Operations Division
- Improve pavement markings

Third Quarter 2019 Status Update

Street Operations

Street Operations continued the in-house sidewalk repair and replacement program, asphalt patching and pothole repairs, and ongoing maintenance programs focused on preventative maintenance and public safety.

Crews replaced and repaired damaged sidewalks in Cherry Hills neighborhood and off East Riverside Drive with spot repairs occurring in other areas. These areas serve Northshore Middle School, Woodmoor Elementary and Cedar Park Christian School.

Warmer weather allowed crews to do larger areas of roadway asphalt patching which focused primarily in Woodcrest Estates and Amber Ridge neighborhoods. Crews also completed pothole repairs throughout the City. Summer is our growing season so Street crews also focused on mowing right-of-ways, addressing sight distance problems at busy intersections and maintaining landscaped areas on arterial roadways.

Crews prepared for the new school year by checking that crosswalk signs were visible and flags stocked making it safer for students to return to school. The table below shows progress in 2019 thru the third quarter.

Metrics	
Sidewalk Repair	1,531 linear feet
Asphalt Repair	19,753 square feet
Potholes	683
Sign Maintenance	495

Pavement Preservation

The Pavement Preservation Program accomplishments in the third quarter include:

- Arterial Overlay:
  - The pavement overlay of NE Woodinville Dr from I-405 to the east city limits was completed in August.
- Arterial Street Seal and Repair:
  - The annual crack sealing project was completed on local and arterial streets throughout the city. Some of this work was in preparation for slurry seal work to begin next year.
  - The degraded pavement in the southbound lane of 120th Ave NE just south of North Creek Pkwy N was replaced in August.

Safe School Walk Routes

Major accomplishments of the Safe School Walk Routes Program at the 19th Ave SE, 232nd St SE, and 23rd Ave Non-Motorized project were moving all overhead utilities underground, installing a retaining wall, adding sidewalk curbs and gutters, and paving a portion of the roadway. The project was 70 percent constructed at the end of the third quarter.

Sidewalk and Crosswalk Program

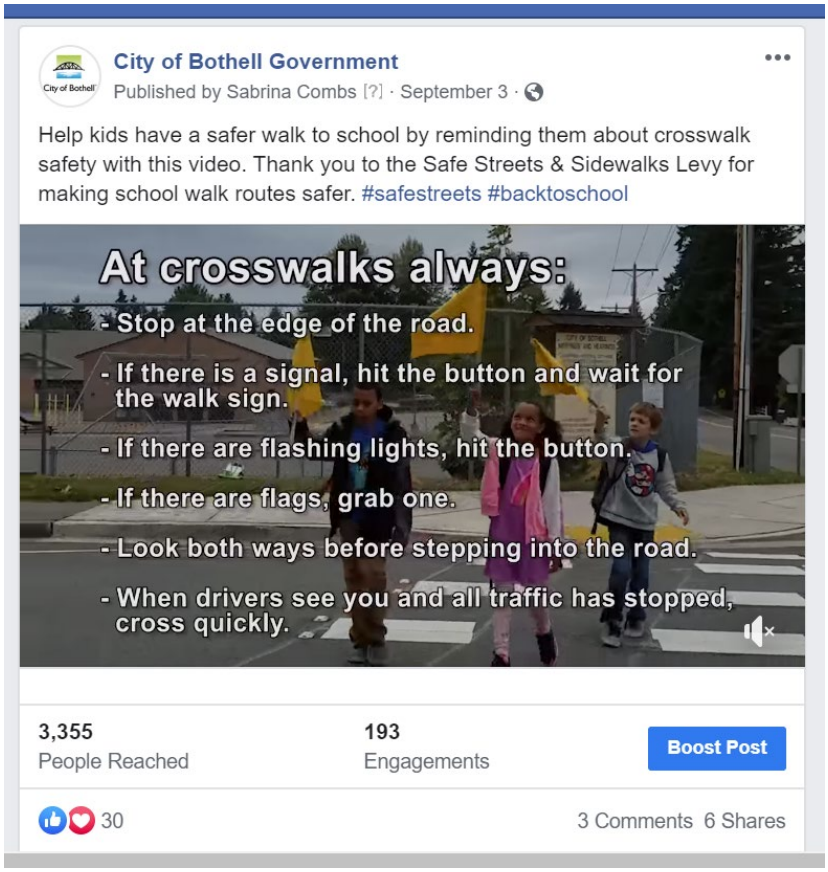
In July, a crosswalk with flashing lights was installed on 119th Ave SE near NE 156th St. There is an existing crosswalk on 119 Ave SE, but to enhance safety, the City installed flashing lights and constructed an Americans with Disabilities Act (ADA)-compliant curb ramp to meet current standards.

Please see the Safe Streets & Sidewalks Levy online map for all project locations and timelines.

Communications

The Communications Team posted information on social media about the completion of the Woodinville Dr paving project, Public Works Operations staff adding new flags to crosswalks and a video with instructions for using crosswalks between August and September.

3rd Quarter 2019 Update



Public Works staff provided Safe Streets & Sidewalks Levy outreach at the Sustainamania event on August 10 at Bothell City Hall. The booth included project updates and reports, coloring books and other activities for kids, and a photo booth for future Public Works employees.

3rd Quarter 2019 Update

The City also mailed postcards to the neighborhoods that will be impacted by the slurry seal project in 2020 to explain the preparation work that occurred in August and September.

Please visit the Safe Streets & Sidewalks website to find the most current information about Safe Streets & Sidewalks Programs, including financial reporting.

Att-2

3rd Quarter 2019 Update

Safe and Secure Bothell

In November 2018, Bothell voters passed two public safety ballot measures; a 12-year Levy "Lid Lift" for additional staff positions in police, fire, court, and supportive services, and a 20-year Capital Bond to rebuild two aging fire stations. The first half of this report provides background information on what is included the levy and bond packages. The second half provides third quarter 2019 progress updates for both programs of work.

The Levy Lid Lift

This ballot measure increases the amount of property tax revenue the City can collect for the next 12 years (2019-2031) to fund additional public safety staff and services. After 12 years, Bothell residents will have another opportunity to decide on the level and cost of public safety service they desire.

The levy lid lift supports 27 additional public safety staff and other operational and program needs. Key features include: full-time emergency medical services at Station 45, additional patrol shift during peak hours, new Community Crime Reduction team for proactive policing, traffic enforcement, school safety, crime investigation, community engagement, an embedded mental health professional, and more.

- 2019 tax rate is $0.43/$1,000 assessed value (AV)
- Totals approximately $220/year on a $500,000 home
- Generates an estimated $4.85 million in 2019

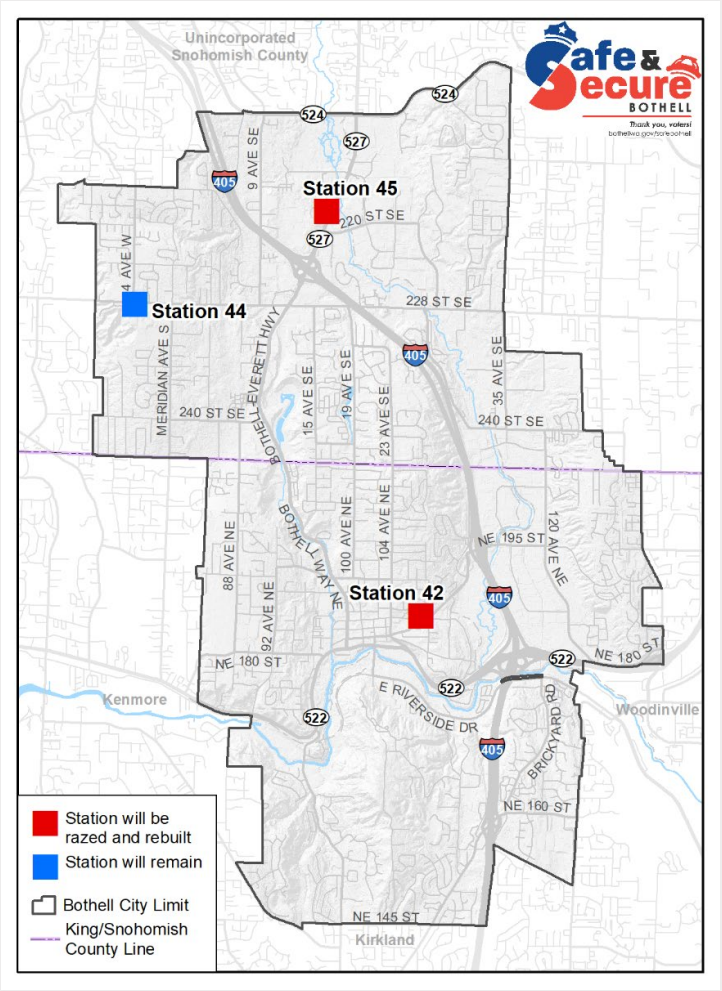
3rd Quarter 2019 Update

The Capital Bond

Approval of the Capital Bond allows the City to issue bonds worth up to $35.5 million to demolish and rebuild Stations 42 (Downtown) and 45 (Canyon Park). Station 44 is a Snohomish County Fire District 10 station and will not be rebuilt. These projects are paid for entirely by the additional, voter-approved property tax revenue the City will collect over the next 20 years (2020-2040).

The rebuilds include health and safety upgrades, technical modernization, energy efficiency, and more to accommodate current and future growth. For context, Station 42 was built in 1980 and Station 45 was built in 1985.

The City issued the first round of bonds in the fall of 2019, meaning Bothell residents will not be taxed for the bond until 2020. Bothell residents' bond tax rate will fluctuate according to the timing of the bond issuances.



Third Quarter 2019 Levy Status Update

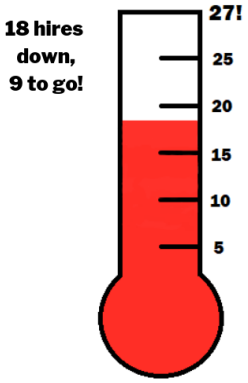
Hiring and Training

Hiring and training for the new levy-funded positions continued as expected during the third quarter. Two officers began training at the Basic Law Enforcement Academy, three officers continued with field training in Bothell, and the first levy-funded officer successfully completed training and began working a solo shift. New hires from this time period include:

- 4 Police Officers
- 1 Crime Analyst (police civilian)
- 1 Police Support Officer
- 1 Building Maintenance Specialist

3rd Quarter 2019 Update

To date, 18 of the 27-total levy-funded positions have been filled:



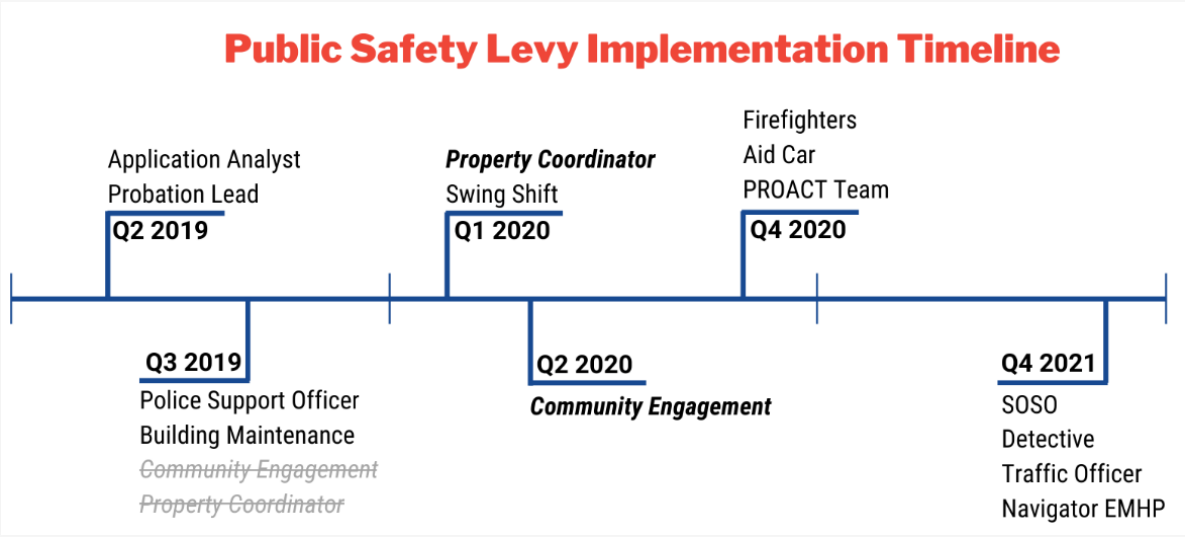
- Nine of the thirteen Police Officers;
- Four of the six Firefighters;
- Two of the five police civilians;
- One Probation Lead; and
- Two Supportive Service Positions.

Service Delivery

The Police Department and Public Works Departments implemented three new services in Quarter 3:

- An additional Police Support Officer to safely transport individuals in custody between detention facilities and the court;
- Additional Building Maintenance Specialist to ensure safe, well-maintained public safety buildings;
- and a new Crime Analyst who will be part of the upcoming Community Crime Reduction (PROACT team).

During this time period the Police Department experienced a significant turnover in administrative leadership and staffing due to several retirements and separations. Between backfilling vacancies and maintaining a rigorous background investigation process for all new hires, hiring the Property Coordinator and the Community Engagement Coordinator is taking longer than anticipated. The Police Department expects to hire the Property Coordinator in Quarter 1 of 2020 and the Community Engagement Coordinator in Quarter 2 of 2020. The figure below shows these changes to levy implementation project timeline:



Third Quarter 2019 Fire Station Replacements Status Update

During the third quarter, the Fire Station Replacements Team and the construction project manager, OAC services, continued the process of selecting a progressive design-build team. The City received Statements of Qualifications from eight design-build teams and invited four to submit project proposals. The team conducted interviews with each of the four teams and evaluated the proposals based on the ability to meet time and budget requirements, technical approach, design concept, and other factors. A contract with the highest scoring team will be brought to City Council for consideration in the fourth quarter.

About Progressive Design Build

In contrast to the traditional capital project delivery method, Design-Bid-Build (DBB), Progressive Design-Build (PDB) involves only one contract between the City and a Design-Build (DB) team. The DB team is comprised of the contractor and the architect. This method provides several benefits, including:

- City may select the DB team based on qualifications and cost.
- DB subcontractors can be selected on best value rather than lowest bid.
- Construction often overlaps with design which increases the overall delivery speed.
- Increased cost certainty as the overall price will be negotiated between the City and the DB team.

Communications

Staff continue to tell the Safe and Secure story on the City website and social media, and through community engagement opportunities. See www.bothellwa.gov/safebothell for the latest progress updates and stories on new hires.

City of Bothell Government Bothell Police Department Bothell Fire Department	@cityofbothell @bothellpolice	@cityofbothell @BothellPolice @BothellFire

City of Bothell™

Third Quarter 2019 Financial Report

December 17, 2019

City Council:

The following narrative and attached document are the budget status reporting for the third quarter of the 2019-2020 biennium, the period ending September 30, 2019. The purpose of this reporting is to ensure that the City Council is kept abreast of positive or negative trends impacting the financial condition of the City, to provide a snapshot of the City's period-to-date financial results, and to present other financial matters affecting the City.

In the first and second quarters of the year staff cautiously labeled differences between forecasted and budgeted revenue trends recognizing at that point that the duration of the anomalies was not long enough to be considered bona fide trends. At the end of the third quarter, however, many of the anomalies have continued and staff is now comfortable labeling them as trends. Unfortunately, the trends affecting the General Fund are negative. The following narrative includes a description of these items as well as a snapshot of the overall financial results from the third quarter.

Third Quarter Financial Report

The General Fund

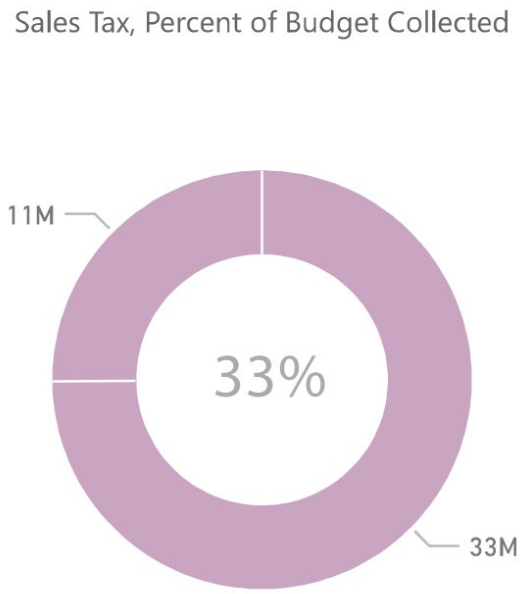
The overall theme for the General Fund at the end of the third quarter is a continuation of the earlier themes presented at the end of the first and second quarters. No new trends were identified in the third quarter, but as described above confidence is rising that the anomalies reported in prior quarters are bona fide trends. General Fund revenues taken as a whole continued to lag budgeted amounts at the end of the third quarter. The result taken as a whole does not tell the story of two more concerning trends: sales tax and utility tax under performance. A discussion of these items follows.

Sales Tax Update

Sales tax continues to lag budgeted amounts by approximately three-percent. While three-percent is not an alarming value, the trend has continued at roughly the same rate all year signaling a trend beyond seasonality. Forecasting of revenues for biennial budgeting compounds year-over-year increases in sales tax, so a negative trend in the first year of the budgetary period will likely compound in the second year. The biennial result of the underperforming sales tax does not differ significantly from past quarterly reports, but the message is tempered with less optimism as the trend has continued over a longer period of time. It should also be noted that unless there are signs of a rebound in 2020 during 2021-2022 budget development the effects of this trend will negatively impact the 2021-2022 sales tax forecast.

Additionally, during the third quarter the Department of Revenue issued a significant sales and use tax refund to a Bothell taxpayer. As a result, Bothell was forced to return approximately $300,000 in sales and use tax to the State. This was a one-time event.

The chart to the right is a graphical representation of period-to-date sales tax collections relative to the amounts in the biennial budget.



Utility Tax Update

Utility taxes appears to be continuing the trend reported in the second quarter of poor revenue performance. While utility tax volatility is typically associated with weather, the poor performance in this case appears to be attributable to consumer behavior. The move away from traditional landline telephones and very low cost cellular phone charges (not including data charges) is negatively impacting telephone utility taxes. Additionally, cable television utility tax collections appear to be sliding a bit too.

It is difficult to predict the new normal for these utility taxes, but the expectation is that collections will continue to decline at a modest pace as consumer preferences evolve.

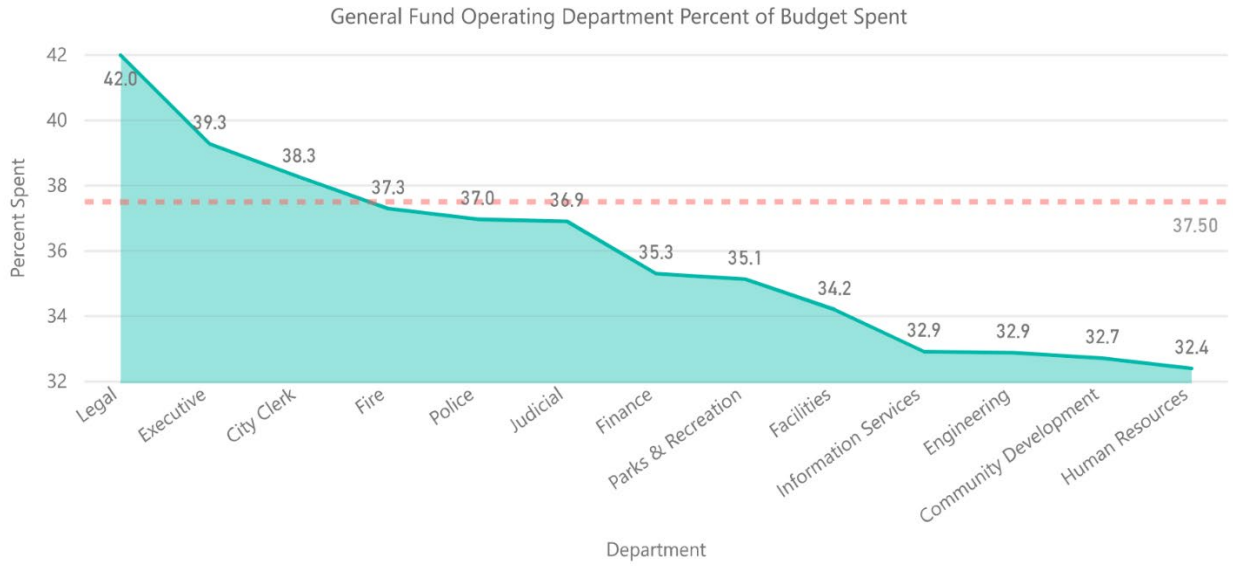
GEMT and Transport Revenue Update

The General Fund received nearly $600,000 in additional Ground Emergency Medical Transport (GEMT) revenues in the third quarter. As a reminder, this revenue is new to the City and is unbudgeted. The receipt of this unbudgeted revenue is softening the impact of the aforementioned sales tax and utility tax underperformance. Budgeted transport revenue received from sources other than the State also performed well in the third quarter and are on track to beat budgeted amounts for the biennium.

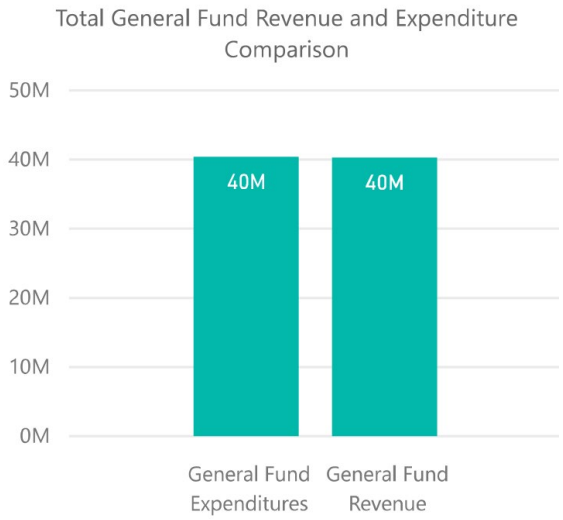
General Fund Expenditures

General Fund departments as a whole, continued to exercise good budget discipline during the third quarter of the year. Department spending, in most cases, is near or below budgeted amounts biennium-to-date and are largely unremarkable.

The following chart is a graphical representation of departments' percentage of spending of their biennial budgets to date. The dotted red line represents the relative position in the biennium, 37.5%. A department with a flat spending curve (one that spends the exact same amount each quarter of the biennium) would be on target to spend 100% of their budget appropriation at the end of the biennium if the department was at 37.5% as of the date of this report.



As has been the trend thus far in the year, the combined result of the lower than budgeted General Fund revenue plus the lower than budgeted expenditures is a General Fund operating deficit (the difference between revenue and expenditures) including the new and unbudgeted GEMT revenue. Despite a growing deficit, 2019 financial results are likely to be better than budgeted.



Other Funds

Real estate excise tax (REET) collections slowed significantly during the third quarter. As a result REET revenues lost some of the earlier gains, but ended the quarter with collections approximately $200,000 in excess of period-to-date budgeted amounts.

As was reported in prior periods, utility revenues and expenditures are consistent with budgeted amounts and are unremarkable.

Other Matters

Economic Update. This is the third quarterly report to include the mention of a looming recession. Generally speaking economic results do not indicate that we are in a recession. Economic indicators, however, indicate uncertainty in the near term and show signs of a possible recession. Also, there is tremendous uncertainty in certain economic sectors and in the global economy. This uncertainty historically impacts consumer confidence, which may impact sales tax collections and other transaction taxes, such as REET. While current data does not indicate a recession, it is becoming increasingly difficult to ignore the chatter that a recession is on the horizon.

Long Term Financial Sustainability. The continuation of the sales and utility tax trends, as well as the possibility of a recession in the near term, necessitate a mention of the long term financial sustainability issues facing the City. While each Washington city has a unique set of financial circumstances, most, if not all, face the issues resulting from expenditure growth that outpaces revenue growth (commonly

referred to as a structural deficit). While a number of factors contribute to impact Bothell's structural deficit, two factors standout due to their uniqueness: the nature of past economic development efforts and the City's response to the Great Recession.

Past economic development efforts appear to have emphasized community character rather than developing sales tax revenue, the result is relatively low sales tax revenue per capita to fund city services.

Also, during the Great Recession a decision was made to forego the allowable property tax increase and maintain levels of service by funding a portion of operations with fund balance. Due to the nature of our property tax system, the decision to forego annual property tax increases will negatively impact the value of the City's regular property tax levy as long as the current tax system is in place. Also, maintaining levels of services throughout the Great Recession without identifying new revenue sources effectively deferred the necessary process of aligning operations with resources, or right-sizing the City's levels of service to its financial means.

The City is at an important financial juncture; addressing the structural deficit and realigning levels of service with financial resources is necessary to maintain the financial health of the City. Staff is preparing to advance innovative solutions and choices to address the structural deficit during 2021-2022 budget development.

Other Matters – Subsequent Events

Credit Rating Upgrade. The credit rating agency Moody's performs an annual process to evaluate whether the City's current credit rating that is assigned to all of the City's outstanding general obligation debt is still appropriate. The process concludes with Moody's publishing an opinion as to whether the current credit rating is sustained, upgraded, or downgraded. In early 2019 Moody's performed this process and sustained the then current rating of Aa2.

In anticipation of issuing the voter approved bonds to rebuild Fire Stations 42 and 45, the City initiated a process to establish a new credit opinion, this process is much more in depth compared to the annual maintenance process. Throughout the lengthy process staff focused on demonstrating the City's credit strengths.

On October 11th, at the conclusion of the process, Moody's upgraded their credit opinion of the City to Aa1. The opinion upgrade applies not only for the upcoming bond sale, but to all of the City's existing general obligation debt. The rate of interest that investors are willing to accept from an agency's debt is directly correlated with the agency's credit rating, so this upgrade will result in lower interest cost to the City for future debt issuances, including the bonds to rebuild Fire Stations 42 and 45.

Fire Station Bond Sale. The City sold $25.5 million of voter approved bonds in the fourth quarter. The proceeds of the bond sale will be used to fund the reconstruction of Fire Stations 42 and 45. Voters approved a total bond issuance of $35.5 million; it is expected that the second bond sale for $10 million will occur in two-to-three years based on the cash needs of the project.

The recent bond sale was extremely competitive; eight underwriters submitted bids to buy the bonds. The successful bidder, Morgan Stanley proposed the lowest true interest cost at approximately 2.4 percent annual percentage rate. The rate of interest is lower than the estimate used in the development of the ballot measure taken to voters and will result in savings on the total cost of the fire station projects. The low rate is attributable to changes in the bond market that are favorable for issuers and the City's credit rating upgrade.

In conclusion, the third quarter financial results are generally consistent with the budget due to thoughtful financial stewardship demonstrated by the City Council and staff. While uncertainty is present in the economy, staff is monitoring the situation and is preparing the organization to address whatever comes its way.

Please contact me with any questions.

Best regards,

Chris Bothwell
Finance Director

Revenue Status Report - at September 30, 2019

Fund Description	ORIGINAL 2019-20 Projections	ADJUSTED 2019-20 Projections	2019 ACCRUED Revenue at 9/30/2019	% Rec'd To Date
City Levy	24,768,384	24,768,384	9,108,146	36.8%
EMS Levy	3,024,463	3,024,463	1,075,001	35.5%
	27,792,847	**27,792,847**	**10,183,147**	**36.6%**
Retail Sales Tax	23,336,172	23,336,172	7,291,625	31.2%
Construction Sales Tax	6,000,000	6,000,000	2,551,717	42.5%
Hotel/Motel Sales Tax	900,000	900,000	322,392	35.8%
Criminal Justice Sales Tax	2,655,784	2,655,784	863,722	32.5%
	32,891,956	**32,891,956**	**11,029,456**	**33.5%**
Electric Public Utility Tax	6,349,875	6,349,875	2,167,837	34.1%
Utility Tax Rebate	(5,600)	(5,600)	(3,775)	67.4%
Gas Public Utility Tax	1,963,500	1,963,500	531,170	27.1%
Cable TV Utility Tax	1,786,575	1,786,575	558,783	31.3%
Cable TV PEG Fee	64,000	64,000	22,442	35.1%
Telephone Utility Tax	1,850,000	1,850,000	554,199	30.0%
Cellular Utility Tax	1,200,000	1,200,000	266,491	22.2%
Water Utility Tax	1,007,161	1,007,161	354,569	35.2%
Storm & Surface Water Utility Tax	658,690	658,690	241,567	36.7%
Sewer Utility Tax	878,764	878,764	365,902	41.6%
Sanitation Utility Tax	925,000	925,000	371,575	40.2%
Sanitation Admin Fee - Recycling	85,000	85,000	32,062	37.7%
Gambling Tax	40,000	40,000	20,847	52.1%
	16,802,965	**16,802,965**	**5,483,669**	**32.6%**
Leasehold Excise Tax	60,000	60,000	21,531	35.9%
Admissions Tax	30,000	30,000	8,620	28.7%
	90,000	**90,000**	**30,151**	**33.5%**
Whatssup Facilities Permits - Parks	20,000	20,000	9,650	48.2%
Alderwood Water Franchise Fee	925,000	925,000	325,524	35.2%
Northshore Utility Franchise Fee	525,000	525,000	155,836	29.7%
Frontier/FIOS Franchise Fee	190,000	190,000	57,633	30.3%
Franchise Agreement Reviews	30,000	30,000	10,000	33.3%
Business & Sign Licenses	2,150,000	2,150,000	787,500	36.6%
	3,840,000	**3,840,000**	**1,346,143**	**35.1%**
Building Permits	2,600,000	2,600,000	1,051,675	40.4%
Plumbing & Mechanical Permits	1,050,000	1,050,000	399,530	38.1%
Pre-Application Fee	140,000	140,000	56,463	40.3%
Animal License	155,000	155,000	50,103	32.3%
Special Event Permit	0	0	675	0.0%
Concealed Weapon Permit	20,000	20,000	5,583	27.9%
Extension of Const Noise Hours	0	0	0	0.0%
	3,965,000	**3,965,000**	**1,564,029**	**39.4%**
Bulletproof Vest Grant - DOJ	0	0	0	0.0%
DUI Emphasis Grant	0	0	0	0.0%
Target Zero Emphasis Grant	0	0	236	0.0%
Distracted Driving Emphasis Grant	0	0	1,386	0.0%
Seat Belt Patrol Grant	0	0	0	0.0%
"Click It or Ticket" Grant	0	0	1,144	0.0%
Motorcycle Safety Grant	0	0	0	0.0%
Speed Emphasis Grant	0	0	0	0.0%

Revenue Status Report - at September 30, 2019

Fund Description	ORIGINAL 2019-20 Projections	ADJUSTED 2019-20 Projections	2019 ACCRUED Revenue at 9/30/2019	% Rec'd To Date
Heavy Rescue Grant (Pierce/WTF)	0	0	5,001	0.0%
Emergency Mgmt Perf Grant (EMPG)	50,000	50,000	24,898	49.8%
Structural Collapse Training Grant	0	0	1,904	0.0%
CCTA Training - King County	0	0	1,410	0.0%
Fire Fighter Training - State Patrol	0	0	0	0.0%
WA LFO Funding Distribution	0	0	0	0.0%
LSWFA Recycling Grant - DOE	5,000	5,000	17,687	353.7%
Shoreline Master Prog Grant - DOE	0	0	20,000	0.0%
Local Source Partnership Control Grant	0	157,000	0	0.0%
EMS Prehospit Participation Grant	2,700	2,700	1,266	46.9%
PUD Privilege Tax	300,000	300,000	111,935	37.3%
LEOFF Special Funding (Pension)	0	0	0	0.0%
Marijuana Excise Tax	130,000	130,000	67,862	52.2%
MVET/Crim Just - Population	25,500	25,500	10,266	40.3%
CJ - Special Programs	100,000	100,000	36,904	36.9%
DUI - Cities	13,600	13,600	4,660	34.3%
Liquor Excise Tax	472,600	472,600	191,505	40.5%
Liquor Profits	744,300	744,300	276,718	37.2%
Port of Seattle Grant - Canyon Park	0	0	0	0.0%
King Cty Waste Red/Recycle Grant	50,000	50,000	28,893	57.8%
King County Haz Waste Grant	20,000	20,000	11,747	58.7%
4Culture Grant - Preservation Support	0	0	0	0.0%
King County IS Support - 911 Fees	310,000	310,000	152,079	49.1%
Private Timber Harvest Tax	0	0	41	0.0%
	2,223,700	**2,380,700**	**967,542**	**40.6%**
Civil Fee - App	0	0	0	0.0%
Court Administrative Fees	16,000	16,000	3,671	22.9%
IT Time Pay Fee	4,000	4,000	172	4.3%
Other Statutory Cert/Copy Fees	600	600	276	46.1%
Credit Card Service Fees	200,000	200,000	0	0.0%
Microfilm & Copy Charges	450	450	213	47.3%
Sales of Maps/Publications	1,800	1,800	41	2.3%
Sale of Taxable Items	3,000	3,000	218	7.3%
Printing & Duplicating	2,000	2,000	2,391	119.5%
Personnel Services	200	200	30	15.0%
Law Enforcement / Fingerprinting Fees	42,000	42,000	9,847	23.4%
Law Enforcement / Restitution	0	0	1,029	0.0%
NSD - School Resource Officer	135,000	135,000	37,938	28.1%
Police Services - UW Athletic Events	100,000	100,000	2,249	2.2%
UW Bothell Storefront Officer	335,000	335,000	139,598	41.7%
Fire Report Fees	800	800	2,963	370.4%
Fire Code Permit Fees	238,000	238,000	113,413	47.7%
DUI Emergency - Fire	1,000	1,000	0	0.0%
Adult CPR - Fire	22,000	22,000	6,692	30.4%
First Aid - Fire	0	0	0	0.0%
Bike Helmets - Fire	3,000	3,000	1,630	54.3%
DUI Drill - Fire	1,600	1,600	800	50.0%
CERT Courses - Fire	0	0	0	0.0%
Fire Training - Outside Agencies	50,000	50,000	32,814	65.6%
Fire Protection Services	4,300,000	4,300,000	1,514,073	35.2%
Adult Probation Service Charge	800,000	800,000	31,735	4.0%
Record Check Fee	9,000	9,000	872	9.7%
Booking Fees	10,000	10,000	575	5.7%
DUI Emergency Response	28,000	28,000	11,369	40.6%
AMR Ambulance Service Fees	10,000	10,000	10,963	109.6%
Motor Vehicle Accident Fees	20,000	20,000	8,852	44.3%
EMS Transport Fees	520,000	520,000	1,610,885	309.8%
EMS Transport Fees - FD#10	75,000	75,000	68,927	91.9%
Ambulance Svc Fees (Seahawks)	0	0	725	0.0%

Revenue Status Report - at September 30, 2019

Fund Description	ORIGINAL 2019-20 Projections	ADJUSTED 2019-20 Projections	2019 ACCRUED Revenue at 9/30/2019	% Rec'd To Date
Lake Forest Park Dispatch	320,000	320,000	116,849	36.5%
Burial	2,400	2,400	1,648	68.7%
Cemetery Fees	1,500	1,500	438	29.2%
Sanitation Accounts Receivable	0	0	(594)	0.0%
Zoning & Subdivision Fees	6,000	6,000	3,616	60.3%
Plan Check Fees	2,400,000	2,400,000	625,933	26.1%
Fire Plan Review Fees	140,000	140,000	31,791	22.7%
Fire Suppression Sys Review	175,000	175,000	164,119	93.8%
Development Review Fee	2,000,000	2,000,000	787,722	39.4%
Dev Review Technology Surcharge	340,000	340,000	124,891	36.7%
Softball Leagues	110,000	110,000	0	0.0%
Recreation Program Fees	200,000	200,000	137,516	68.8%
	12,623,350	**12,623,350**	**5,608,889**	**44.4%**
Interfund Svcs - Finance/HR	493,696	493,696	185,136	37.5%
Interfund Svcs - City Mgr/Clerk	324,488	324,488	121,683	37.5%
Interfund Svcs - Information Svcs	573,736	573,736	260,480	45.4%
Interfund Svcs - Facilities	296,024	296,024	111,009	37.5%
Interfund Svcs - Legal	103,604	103,604	38,851	37.5%
CFP Transfers	3,977,464	3,977,464	1,415,695	35.6%
	5,769,012	**5,769,012**	**2,132,854**	**37.0%**
Court Mandatory Insurance Adm	6,000	6,000	1,240	20.7%
Traffic Infraction Penalties	425,000	425,000	99,492	23.4%
Non-Traffic Penalties	4,400	4,400	1,414	32.1%
Parking Infraction Penalties	20,000	20,000	5,926	29.6%
Handicapped Parking Infractions	12,000	12,000	894	7.5%
DUI Fines	42,000	42,000	7,390	17.6%
DUI Fines - Youth In Vehcile	300	300	0	0.0%
Crim Conv Fee - DUI	800	800	21	2.6%
Other Criminal Misdemeanor Fines	0	0	0	0.0%
Criminal Traffic Misdemeanors	120,000	120,000	22,117	18.4%
Crim Conv Fee - CT	9,600	9,600	1,401	14.6%
Investigation Fund Assessment	0	0	0	0.0%
Criminal Non-Traffic Fines	72,000	72,000	12,335	17.1%
Crim Conv Fee - CN	7,000	7,000	906	12.9%
Crime Fee	0	0	230	0.0%
Witness Costs	0	0	0	0.0%
Public Defense Costs	30,000	30,000	5,869	19.6%
Court Interpreter Costs	1,000	1,000	0	0.0%
Court Cost Recoupments	26,000	26,000	0	0.0%
False Alarm Fines - Police	24,000	24,000	12,100	50.4%
False Alarm Fines - Fire	30,000	30,000	17,637	58.8%
Fire Code Enforcement Fines	0	0	4,395	0.0%
	830,100	**830,100**	**193,366**	**23.3%**
Investment Interest	1,250,000	1,250,000	1,202,416	96.2%
Sales Tax Interest	30,000	30,000	20,086	67.0%
Court Interest Collected	45,000	45,000	5,512	12.2%
Other Interest	0	0	0	0.0%
Interest on Property Tax	400	400	5,319	1329.7%
City Hall Parking Garage Rental Fees	355,250	355,250	0	0.0%
Booth Rentals - Spring Garden Fair	0	0	(100)	0.0%
Bothell Ops Center Cell Tower Rental	0	0	9,000	0.0%
Blyth Park Facility Rentals	60,000	60,000	30,187	50.3%
Cedar Grove Park Facility Rentals	18,000	18,000	13,645	75.8%
Bothell Landing Facility Rentals	10,000	10,000	2,512	25.1%
Lytle House Rentals	16,000	16,000	28,854	180.3%
North Creek Sports Field Rentals	440,000	440,000	100,067	22.7%
Doug Allen Sports Field Rentals	30,000	30,000	(3,090)	-10.3%

Revenue Status Report - at September 30, 2019

Fund Description	ORIGINAL 2019-20 Projections	ADJUSTED 2019-20 Projections	2019 ACCRUED Revenue at 9/30/2019	% Rec'd To Date
Centennial Park Facility Rentals	2,000	2,000	7,490	374.5%
NC School House Facility Rentals	0	0	(400)	0.0%
Cedar Grove Caretaker Rent	0	0	0	0.0%
Rents & Royalties	2,000	2,000	4,209	210.5%
Donations - Police	2,000	2,000	916	45.8%
Donations - Fire	10,000	10,000	7,300	73.0%
Donations - Parks	100,000	100,000	20,234	20.2%
Sponsorships - Sustainamania	0	0	2,030	0.0%
Sale of Scrap & Junk	0	0	0	0.0%
Sale of Unclaimed Property	0	0	0	0.0%
Judgements & Settlements	0	0	0	0.0%
Cashiers Over & Short	0	0	(28)	0.0%
Small Overpayments	0	0	2,057	0.0%
Other Misc Revenue	200,000	200,000	203,003	101.5%
Miscellaneous Service Charges	0	0	0	0.0%
Other General Government	0	0	0	0.0%
Wildfire Reimbursements	0	0	22,515	0.0%
Misc Revenue - Parks	0	0	0	0.0%
JIS/Trauma	30,000	30,000	8,114	27.0%
Local/JIS Account	0	0	0	0.0%
School Zone Safety	3,000	3,000	1,889	63.0%
Forfeiture Proceeds	0	0	803	0.0%
Sale of Fixed Assets	0	0	0	0.0%
	2,603,650	**2,603,650**	**1,694,539**	**65.1%**
Operating Transfers - In	1,398,000	1,398,000	43,373	3.1%
	110,830,580	**110,987,580**	**40,277,158**	**36.3%**
Street	12,061,100	12,061,100	4,379,547	36.3%
Arterial Street	7,404,438	7,404,438	1,566,841	21.2%
Park Cumulative Reserve	2,184,000	2,184,000	613,858	28.1%
Drug Seizure	115,000	115,000	10,441	9.1%
Fire Impact Fees	360,000	360,000	39,370	10.9%
Public Safety Levy	0	1,000,000	3,733,006	373.3%
LIFT GO Bond	3,995,100	3,995,100	1,498,688	37.5%
2013 GO Bond	1,393,926	1,393,926	521,822	37.4%
Capital Improvement	65,486,124	66,986,124	12,862,871	19.2%
Construction & Acquisition	0	1,000,000	52,193	5.2%
Water	11,934,398	11,934,398	4,685,756	39.3%
Sewer	16,605,575	16,605,575	6,301,290	37.9%
Storm & Surface Water	14,140,451	14,140,451	4,966,203	35.1%
Equipment Rental	4,697,604	4,697,604	1,679,858	35.8%
Self Insurance	3,640,054	3,640,054	1,358,814	37.3%
Asset Replacement	3,606,165	3,606,165	1,596,038	44.3%
Cemetery Endowment	0	0	0	0.0%
Firemen's Pension Reserve	128,950	128,950	49,839	38.7%
	147,752,885	**151,252,885**	**45,916,434**	**30.4%**
	258,583,465	**262,240,465**	**86,193,592**	**32.9%**

Expenditure Status Report - at September 30, 2019

Fund	Description	Dept	Original 2019-20 Appropriations	MODIFIED 2019-20 Appropriations	2019-20 ACCRUED Expenditures	% Used To Date
001	Legislative	05	546,551	546,551	279,672	51.2%
001	Judicial	10	1,880,776	1,880,776	694,150	36.9%
001	Executive	15	2,474,984	2,474,984	972,162	39.3%
001	Finance	20	3,303,247	3,303,247	1,166,250	35.3%
001	City Clerk	25	786,382	786,382	300,908	38.3%
001	Legal	35	2,010,884	2,010,884	844,450	42.0%
001	Human Resources	40	2,123,216	2,123,216	687,916	32.4%
001	Facilities	45	3,215,412	3,215,412	1,099,666	34.2%
001	Information Services	46	8,056,035	8,056,035	2,652,004	32.9%
001	Non-Departmental	50	3,901,638	4,046,638	1,530,264	37.8%
001	Police	55	33,056,826	33,056,826	12,219,607	37.0%
001	Fire	61	26,523,757	26,523,757	9,891,291	37.3%
001	Engineering	75	8,518,223	8,518,223	2,801,239	32.9%
001	Parks & Recreation	77	5,411,159	5,411,159	1,901,147	35.1%
001	Community Development	80	7,736,469	7,736,469	2,531,078	32.7%
001	Interfund Transfers Out	95	1,716,448	1,716,448	811,764	47.3%
TOTAL EXPENDITURES - GENERAL FUND			**111,262,007**	**111,407,007**	**40,383,567**	**36.2%**
101	Street		12,264,880	12,264,880	3,876,721	31.6%
102	Arterial Street		5,105,192	5,105,192	1,371,062	26.9%
107	Park Cumulative Reserve		153,000	153,000	2,001	1.3%
109	Drug Seizure		28,800	28,800	1,700	5.9%
112	Fire Impact Fees		0	0	0	0.0%
114	Public Safety Levy		0	0	1,311,759	0.0%
213	LIFT GO Bond		3,995,100	3,995,100	1,498,988	37.5%
214	2013 GO Bond		1,393,926	1,393,926	521,897	37.4%
305	Capital Improvements		70,695,623	73,195,623	12,373,050	16.9%
306	Construction & Acquisition		0	0	142,313	0.0%
401	Water		14,937,192	15,937,192	4,876,063	30.6%
402	Sewer		20,603,686	21,603,686	5,685,185	26.3%
406	Storm & Surface Water		19,199,295	19,199,295	4,447,502	23.2%
501	Fleet/Equipment Rental		4,697,598	4,697,598	1,667,927	35.5%
502	Self Insurance		3,640,055	3,640,055	1,390,512	38.2%
505	Asset Replacement		6,356,941	6,356,941	800,122	12.6%
603	Cemetery Endowment		0	0	0	0.0%
604	Firefighters' Pension Reserve		128,950	128,950	37,777	29.3%
TOTAL EXPENDITURES - OTHER FUNDS			**163,200,238**	**167,700,238**	**40,004,577**	**23.9%**
TOTAL EXPENDITURES - ALL FUNDS			**274,462,245**	**279,107,245**	**80,388,145**	**28.8%**

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