	<p align="center"> <b>City Council Meeting</b>  <b>September 16, 2019 - 7:00 PM</b>  <b>City Hall Council Chambers</b>  <b>AGENDA</b>  <b>Watch the meeting LIVE!</b> </p> <p align="center"> <b>Watch the meeting video</b>  Meeting videos are not available until 72 hours after the meeting has concluded. </p>
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**I. CALL TO ORDER**

- A. Pledge of Allegiance
- B. Roll Call

**II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS**

**III. AGENDA MODIFICATIONS**

**IV. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE**

- A. Public Hearings - (No public hearing is scheduled for this evening.)
- B. Audience Participation

*This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.*

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

**V. COUNCIL AD HOC COMMITTEE REPORTS**

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

- 1. Finance Ad Hoc Committee (Chair Wales)

**VI. CONSENT AGENDA**

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

- A. Minutes of the August 26, 2019 Study Session
- B. Minutes of the September 3, 2019 City Council Meeting
- C. Claim Vouchers (Thomas)

Claim voucher list dated September 16, 2019 which includes voucher numbers 455472 through 455658 in the amount of \$5,070,888.14 and one wire transfer in the amount of \$525,972.09.

D. Payroll Vouchers (Thomas)

Payroll check numbers 538606 through 538620 in the amount of \$235,301.89, electronic deposit transmissions in the amount of \$2,085,002.57 for a grand total of \$2,320,304.46 for the period covering August 29, 2019 to September 11, 2019.

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

**VII. UNFINISHED BUSINESS**

**VIII. NEW BUSINESS**

**IX. RESOLUTIONS**

A. Resolution No. 5454 (Tate)

A Resolution of the City Council of the City of Auburn, Washington, declaring the city's intent to adopt legislation to authorize a sales and use tax for affordable and supportive housing

**(RECOMMENDED ACTION: Move to adopt Resolution No. 5454.)**

**X. ORDINANCES**

A. Ordinance No. 6727 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, granting New Cingular Wireless PCS LLC, a franchise for wireless telecommunications facilities

**(RECOMMENDED ACTION: Move to adopt Ordinance No. 6727.)**

B. Ordinance No. 6732 (Tate)

An Ordinance of the City Council of the City of Auburn, Washington related to sales and use taxes; authorizing an additional sales and use tax for affordable and supportive housing, and amending Chapter 3.60 of the Auburn City Code

**(RECOMMENDED ACTION: Move to adopt Ordinance No. 6732.)**

**XI. MAYOR AND COUNCILMEMBER REPORTS**

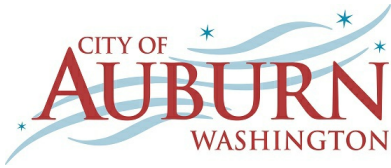
*At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.*

A. From the Council

B. From the Mayor

**XII. ADJOURNMENT**

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



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Minutes of the August 26, 2019 Study Session

**Department:**

City Council

**Attachments:**

[08-26-2019 Minutes](#)

**Date:**

September 12, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

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

**Meeting Date:** September 16, 2019

**Staff:**

**Item Number:** CA.A

	<p><b>City Council Study Session Finance, Technology and Economic Development Special Focus Area August 26, 2019 - 5:30 PM City Hall Council Chambers MINUTES Watch the meeting LIVE!</b></p> <p><b>Watch the meeting video</b> Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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## I. CALL TO ORDER

Deputy Mayor Pelozo called the meeting to order at 5:30 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn.

### A. Roll Call

Councilmembers present: Deputy Mayor Bill Pelozo, Bob Baggett, Larry Brown, Claude DaCorsi, John Holman, Yolanda Trout-Manuel and Largo Wales.

Mayor Nancy Backus and the following department directors and staff members were present: City Attorney Steve Gross, Director of Administration Dana Hinman, Director of Human Resources and Risk Management Candis Martinson, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Parks, Arts, and Recreation Daryl Faber, Director of Innovation & Technology David Travis, Right-of-Way Specialist Amber Price, Real Property Analyst Josh Arndt, Chief of Police Bill Pierson, Police Commander Daniel O'Neil, Police Commander David Colglazier, and Deputy City Clerk Teresa Mattingly.

## II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

There was no announcement, report or presentation.

## III. AGENDA ITEMS FOR COUNCIL DISCUSSION

### A. Draft Ordinance No. 6727 (Gaub) (5 Minutes)

An Ordinance of the City Council of the City of Auburn, Washington, granting New Cingular Wireless PCS, LLC, a franchise for wireless telecommunications facilities

Specialist Price presented Council with an update on Draft Ordinance No. 6727 regarding New Cingular Wireless PCS, LLC's application for a Franchise Agreement to construct a small wireless facilities network within the City's right-of-way. She discussed what services would be provided, location of facilities, license agreement requirements for using City owned poles, the City's review and permitting process, and the next step which

includes a Public Hearing on September 3, 2019.

Council discussed Franchise Agreement fees, who is responsible for tree trimming around the poles and wireless facilities and how other cities handle Franchise Agreements.

Specialist Price and Director Gaub advised Council that the City charges an application fee, Franchise renewal fees, and recovers annual administrative costs, which includes actual staff time.

B. One Stop Shop Approach (Hinman) (20 Minutes)

Discussion on future homeless and human services in Auburn

Director Hinman presented Council with an update on the One Stop Shop approach and discussed the importance and benefits of providing services to disadvantaged members of our community at one convenient location. She also discussed potential services, service providers, the proposed lease terms and negotiation process for an existing building at 2802-2818 Auburn Way North, Auburn's vision for the resource center and the next steps which include, obtaining funding partners and tenants.

Council discussed how 2802-2818 Auburn Way North is zoned, potential clients, tenants and services, and the benefits of having the resource center at this location.

Director Tate advised Council that 2802-2818 Auburn Way North is zoned heavy commercial and meets all zoning requirements.

C. 2019 Fireworks Report (Pierson) (20 Minutes)

Chief Pierson and Commander O'Neil presented Council with a review of the 2019 Fireworks and discussed the 2019 objectives, staffing, calls for service, calls by district, number of arrests and reports made from June through July 5th, the year end results and the plan for 2020.

Council discussed their concerns about the number of complaints they receive from their neighbors regarding illegal fireworks, the hold time when calling 911, and police response time. Council also discussed the option of extending the hours of the discharge area or moving it to a less congested area, banning fireworks in Auburn, and ways to educate the public on the dangers of fireworks.

Council requested a report on which neighboring cities ban fireworks and their 2019 year end results.

IV. FINANCE, TECHNOLOGY AND ECONOMIC DEVELOPMENT DISCUSSION ITEMS

A. IT Update (Travis) (20 Minutes)

Councilmember Wales presided over this section of the meeting.

Director Travis provided Council with an update on IT and discussed the changes they have made within their department including; creating a Business Success Team, Technical Services Team, and a temporary Project Lead position. He also discussed the progress they have made on automating several processes, such as the new employee on-boarding, and reviewed major active projects

Council discussed the option of providing an onboarding class for new Councilmembers, the number of IT employees, the new email system and discussed how secure the City of Auburn's overall system is.

Director Travis advised Council that he feels that we are in a better place as far as security goes, but things change everyday, so IT is continually working on security updates.

#### V. OTHER DISCUSSION ITEMS

There was no other discussion.

#### VI. NEW BUSINESS

There was no new business.

#### VII. MATRIX

##### A. Matrix

Council discussed the Matrix and changed the date on the Fireworks Update to TBD. No other changes were made.

#### VIII. ADJOURNMENT

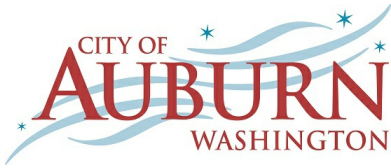
There being no further discussion, the meeting was adjourned at 6:57 p.m.

APPROVED this 16th day of September, 2019.

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BILL PELOZA, DEPUTY MAYOR      Teresa Mattingly, Deputy City Clerk

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



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Minutes of the September 3, 2019 City Council Meeting

**Department:**

City Council

**Attachments:**

[09-03-2019 Minutes](#)

**Date:**

September 12, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

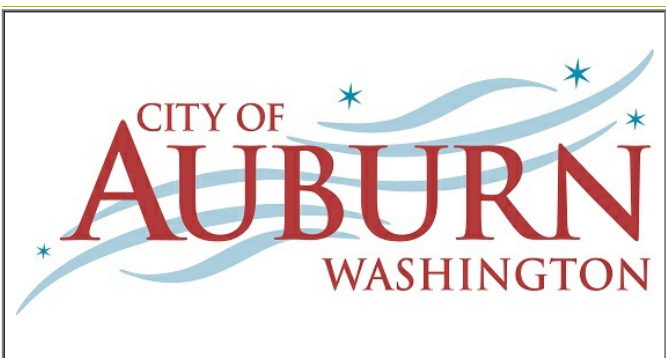
Revised Budget: \$0

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

**Meeting Date:** September 16, 2019

**Staff:**

**Item Number:** CA.B

	<p style="text-align: center;"><b>City Council Meeting</b>  <b>September 3, 2019 - 7:00 PM</b>  <b>City Hall Council Chambers</b>  <b>MINUTES</b>  <b>Watch the meeting LIVE!</b></p> <p style="text-align: center;"><b>Watch the meeting video</b>  Meeting videos are not available until 72  hours after the meeting has concluded.</p>
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## I. **CALL TO ORDER**

### A. **Pledge of Allegiance**

Mayor Nancy Backus called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn and led those in attendance in the Pledge of Allegiance.

### B. **Roll Call**

Councilmembers present: Deputy Mayor Bill Peloza, Bob Baggett, Claude DaCorsi, and John Holman. Councilmembers Larry Brown, Yolanda Trout-Manuel and Largo Wales were excused.

Mayor Nancy Backus and the following department directors and staff members were present: City Attorney Steve Gross, Director of Finance Jamie Thomas, Director of Administration Dana Hinman, Director of Public Works Ingrid Gaub, Director of Innovation & Technology David Travis, Real Property Analyst Josh Arndt, Commander Daniel O'Neil, and City Clerk Shawn Campbell.

## II. **ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS**

### A. **Constitution Week Proclamation**

Mayor Backus to proclaim September 17-23, 2019 as "Constitution Week" in the city of Auburn

Mayor Backus read and proclaimed September 17-23, 2019 as Constitution Week in the city of Auburn to Hilda Maryhew from the Daughters of the American Revolution Lakota Chapter.

Ms. Maryhew gave a brief history on the Women's Right to vote in America. She thanked the Mayor and Council for their support and presented them with a bell to ring on September 17, 2019 to commemorate Constitution Day.

### B. **National Recovery Month Proclamation**

Mayor Backus to proclaim September 2019 as "National Recovery Month" in the city of Auburn



Mayor Backus read and proclaimed September 2019 as National Recovery Month in the City of Auburn to Kathleen Murphy from King County Behavioral Health and Recovery Division, Debbie Christian from Ray of Hope and Oleg Pynda from Ukrainian Community Center of Washington.

Ms. Christian, Ms. Murphy and Mr. Pynda discussed the benefits of the resources they provide and thanked the Mayor and Council for their support and the proclamation.

### **III. APPOINTMENTS**

#### **A. Auburn Tourism Board**

City Council to confirm the appointment of Philip Hernandez to the Auburn Tourism Board for a three-year term to expire December 31, 2021

Deputy Mayor Peloza moved and Councilmember Baggett seconded to appoint Philip Hernandez to the Tourism Board.

MOTION CARRIED UNANIMOUSLY. 4-0

### **IV. AGENDA MODIFICATIONS**

There were no modifications to the agenda.

### **V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE**

#### **A. Public Hearings**

1. Public Hearing for Franchise Agreement No. FRN19-0014 (Gaub)

City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC

Mayor Backus opened the public hearing at 7:16 p.m.

Greg Bush, Wireless Policy Group, Issaquah  
Mr. Bush thanked the Mayor, Council and staff for their support, and discussed how the small wireless facilities are critical to keep up with demand and move forward.

There being no one else to speak the Mayor closed the public hearing at 7:18 p.m.

#### **B. Audience Participation**

*This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.*

Timothy Miller, Auburn

Mr. Miller stated he does not use the shelters due to health concerns. He shared concerns about the day center and suggested the City provide a site for tents, campers and motorhomes.

Roy Armstrong, 816 F St SE, Auburn

Mr. Armstrong stated he had a water leak at his property. He asked for additional consideration on the required time frame for a leak adjustment.

Mike Morry, 2536 I ST NE, Auburn

Mr. Morry stated he is currently living at the Ray of Hope. He expressed his appreciation for the facility and the services it provides. He also discussed how Ray of Hope has helped build him back up and removed the stigma of being homeless.

Ken Washington, 2536 I St NE, Auburn

Mr. Washington stated the staff at Ray of Hope help people feel welcome. He also spoke about the resources and help the programs have provided him.

Bob Holt, 10417 SE 302nd St, Auburn

Mr. Hult stated he volunteers at the Food Bank and hopes the City is able to house all of the resources in one location.

Lynn Snyder, 40513 264th Ave SE, Enumclaw

Ms. Snyder stated she participates in the "Thursday Night's Dinner" and feels the city of Auburn is a mentor of the neighboring cities. She expressed her appreciation for the work the City is doing to provide community services to people in need.

#### **C. Correspondence**

There was no correspondence for Council to review.

#### **VI. COUNCIL AD HOC COMMITTEE REPORTS**

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

##### **1. Finance Ad Hoc Committee (Chair Wales)**

Councilmember DaCorsi reported he and Councilmember Wales have reviewed the claims and payroll vouchers described on the Consent Agenda this evening and recommended their approval.

#### **VII. CONSENT AGENDA**

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

A. Minutes of the August 19, 2019 City Council Meeting

B. Claim Vouchers (Thomas)

Claim vouchers list dated September 3<sup>rd</sup>, 2019 which includes voucher numbers 455289 through voucher 455471 in the amount of \$618,186.36 and three wire transfers in the amount of \$759,523.66.

C. Payroll Vouchers (Thomas)

Payroll check numbers 538589 through 538605 in the amount of \$577,702.86, electronic deposit transmissions in the amount of \$2,075,699.94 for a grand total of \$2,653,402.80 for the period covering August 15, 2019 to August 28, 2019, are approved for payment this 3rd day of September, 2019.

D. Setting Public Hearing for the 2020-2024 Community Development Block Grant Consolidated Plan (Tate)

City Council to set the date for a Public Hearing for the proposed Consolidated Plan 2020-2024 Update (Consolidated Plan) and Analysis of Impediments to Fair Housing Choice to be held on October 7, 2019 at 7:00pm

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

MOTION CARRIED UNANIMOUSLY. 4-0

**VIII. UNFINISHED BUSINESS**

There was no unfinished business.

**IX. NEW BUSINESS**

There was no new business.

**X. RESOLUTIONS**

A. Resolution No. 5447 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, related to forfeited property; declaring forfeited real property as surplus, and authorizing the Mayor to negotiate and execute agreements

Deputy Mayor Peloza moved and Councilmember Holman seconded to adopt Resolution No. 5447.

MOTION CARRIED UNANIMOUSLY. 4-0

B. Resolution No. 5451 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, setting a public hearing to consider the vacation of right-of-way of 130th Avenue SE, between SE 304th Street and SE 302nd Place, within the City of Auburn, Washington

Councilmember DaCorsi moved and Councilmember Holman seconded to

adopt Resolution No. 5451.

MOTION CARRIED UNANIMOUSLY. 4-0

C. Resolution No. 5453 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to negotiate and execute agreements related to the Auburn Consolidated Resource Center

Councilmember Holman moved and Councilmember Baggett seconded to adopt Resolution No. 5453.

MOTION CARRIED UNANIMOUSLY. 4-0

Mayor Backus thanked the Council, volunteers, participants and staff for their hard work to accomplish this program.

Councilmember DaCorsi stated this is a very personal topic and is excited about the ability to be able to help where help is needed.

Deputy Mayor Peloza discussed what a wonderful opportunity it is for the City of Auburn to be able to provide a One Stop Shop resource center.

**XI. MAYOR AND COUNCILMEMBER REPORTS**

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

**A. From the Council**

Deputy Mayor Peloza reported he attended the Philippine Heritage Event at the Nealy Mansion.

Councilmember DaCorsi shared information about Elizabeth Cady Stanton and the role she played as one of the first leaders of the woman's rights movement.

**B. From the Mayor**

Mayor Backus reported she attended the Pioneer Cemetery Dedication Ceremony, the memorial service for Barbie Sharrard, and the Church of the Nazarene "One Neighborhood" open house event. She also shared she will participate in a press conference to announce an interlocal agreement between King County and the City of Seattle for the Regional Governance model for homelessness.

**XII. ADJOURNMENT**

There being no further business to come before the Council, the meeting was adjourned at 7:56 p.m.

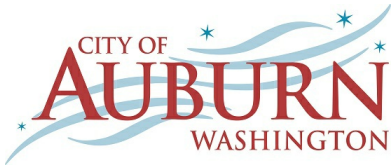
APPROVED this 16th day of September, 2019.

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NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk

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## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Claim Vouchers (Thomas)

**Date:**

September 11, 2019

**Department:**

Finance

**Attachments:**

**No Attachments Available**

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Approve Claim Vouchers.

**Background Summary:**

Claim voucher list dated September 16, 2019 which includes voucher numbers 455472 through 455658 in the amount of \$5,070,888.14 and one wire transfer in the amount of \$525,972.09.

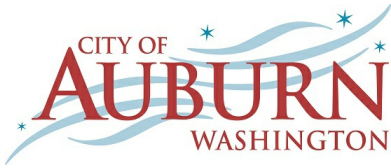
**Reviewed by Council Committees:****Councilmember:****Staff:**

Thomas

**Meeting Date:** September 16, 2019

**Item Number:**

CA.C



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Payroll Vouchers (Thomas)

**Date:**

September 11, 2019

**Department:**

Finance

**Attachments:**

**No Attachments Available**

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Approve Payroll Vouchers.

**Background Summary:**

Payroll check numbers 538606 through 538620 in the amount of \$235,301.89, electronic deposit transmissions in the amount of \$2,085,002.57 for a grand total of \$2,320,304.46 for the period covering August 29, 2019 to September 11, 2019.

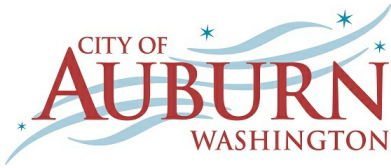
**Reviewed by Council Committees:****Councilmember:****Staff:**

Thomas

**Meeting Date:** September 16, 2019

**Item Number:**

CA.D



## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Resolution No. 5454 (Tate)

**Date:**

September 10, 2019

**Department:**

Community Development

**Attachments:**

[Item 1 Resolution 5454 HB 1406 Statement of Intent](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Schedule Resolution 5454 and Ordinance 6732 for City Council action on September 16, 2019.

**Background Summary:**

On July 22, 2019 staff provided City Council with an overview of HB 1406 which allows cities to capture a portion of sales tax that is already being levied and collected provided that it is used to support affordable housing objectives. If adopted, the City of Auburn will capture approximately \$155,000 annually that can be directed towards a variety of affordable housing initiatives. City Council expressed support for staff to prepare the requisite resolution and ordinance for future consideration of adoption.

Pursuant to the legislation, a local municipality must adopt (1) a Resolution of intent to authorize the maximum capacity of the tax (Resolution 5454), and (2) legislation (e.g. an Ordinance) to authorize the maximum capacity of the tax (Ordinance 6732). HB 1406 does not preclude a local municipality from taking both actions on the same date which is why staff has provided both items. It is important to note that Council would have to take action on the Resolution first and Ordinance second.

If the Ordinance is adopted, Chapter 3.60 of the Auburn City Code will be amended to include language that authorizes the capture of state sales tax revenues for a twenty year period of time. It also clarifies that these funds must be used for affordable housing objectives that are consistent with HB 1406.

Also, if Ordinance 6732 is adopted, City staff will follow the procedures outlined in HB 1406 for proper notification to the Washington State Department of Revenue.

Resolution 5454 and Ordinance 6732 were presented to City Council during the September 9, 2019 Study Session. City Council requested that both matters move forward to the September 16, 2019 City Council meeting for consideration of adoption.

**Reviewed by Council Committees:**

**Councilmember:** DaCorsi

**Staff:**

Tate



**Meeting Date:** September 16, 2019

Item Number: RES.A

## **RESOLUTION NO. 5454**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DECLARING THE CITY'S INTENT TO ADOPT LEGISLATION TO AUTHORIZE A SALES AND USE TAX FOR AFFORDABLE AND SUPPORTIVE HOUSING

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) ("SHB 1406"); and

WHEREAS, SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction, or rehabilitation of affordable housing or facilities providing supportive housing, for the operations and maintenance costs of affordable or supportive housing, or, if eligible, for providing rental assistance to tenants; and

WHEREAS, the tax will be credited against state sales taxes collected within the City and, therefore, will not result in higher sales and use taxes within the City and will represent an additional source of funding to address housing needs in the City; and

WHEREAS, SHB 1406 requires the governing body to adopt a resolution of intent to authorize the maximum capacity of the tax within six months of its effective date, or January 28, 2020. It also requires the governing body to adopt legislation to authorize the maximum capacity of the tax within twelve months of the effective date of SHB 1406, or July 28, 2020; and

WHEREAS, as required by SHB 1406, this resolution declares the City Council's intent to impose a local sales and use tax as authorized by SHB 1406;

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

**Section 1.** Resolution of Intent. The City Council declares its intent to adopt legislation to authorize the maximum capacity of the sales and use tax authorized by SHB 1406 within one year of the effective date of SHB 1406, or by July 28, 2020.

**Section 2.** Further Authority; Ratification. All City officials, their agents, and representatives are authorized and directed to take any action to carry out the terms of this resolution. All acts taken consistent with the authority of this resolution but prior to its effective date are ratified.

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

Dated and Signed: \_\_\_\_\_

CITY OF AUBURN

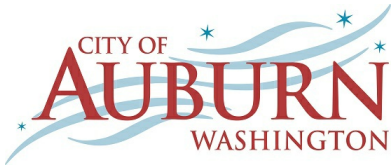
\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

\_\_\_\_\_  
Steven L. Gross, City Attorney



## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Ordinance No. 6727 (Gaub)

**Date:**

August 14, 2019

**Department:**

Public Works

**Attachments:**

[Ordinance No. 6727 Franchise Agreement No.  
FRN19-0014](#)

**Budget Impact:**

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

**Administrative Recommendation:**

City Council introduce and adopt Ordinance No. 6727 for Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC.

**Background Summary:**

Section 20.06.010, Auburn City Code requires a franchise of any commercial utility or telecommunications operator or carrier or other person who wants to use public ways of the City and to provide telecommunications or commercial utility services to any person or area of the City.

New Cingular Wireless PCS, LLC has applied for a Franchise Agreement to be able to construct within the City's rights-of-way a small wireless facilities network. New Cingular Wireless wants to provide personal wireless telecommunications and data communications services for the benefit of wireless communications subscribers in and around the City of Auburn.

The initial proposed build-out includes multiple locations throughout the City on City owned poles and PSE owned poles. The applicant is requesting the entire City as the proposed franchise area so that they can build out their small cell network. Exact locations, plans, engineering and construction schedules would be reviewed, approved and managed through the City's permitting processes that are a requirement of the Franchise Agreement.

A staff presentation was given at the August 26<sup>th</sup> 2019, Study Session discussing Draft Ordinance No. 6727. A Public Hearing to consider this application and hear public comment was held before the City Council on September 3, 2019, in accordance with Auburn City Code Chapter 20.06.030.

Ordinance No. 6727, if adopted by City Council, approves Franchise Agreement No. FRN19-0014 subject to terms and conditions outlined in the Ordinance.

**Reviewed by Council Committees:**

**Councilmember:**

**Staff:**

Gaub

**Meeting Date:** September 16, 2019

Item Number:

ORD.A

## **ORDINANCE NO. 6727**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING NEW CINGULAR WIRELESS PCS, LLC, A FRANCHISE FOR WIRELESS TELECOMMUNICATIONS FACILITIES**

WHEREAS, New Cingular Wireless PCS, LLC ("Grantee"), has applied to the City of Auburn ("City") for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, to install, construct, erect, operate, maintain, repair, relocate and remove Grantee's facilities in, on, over, under, along and/or across those right(s)-of-way; and

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

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

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

#### **Section 1. Grant of Right to Use; Franchise Area**

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

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

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

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, for any purpose that does not interfere with Grantee's rights under this Franchise.

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

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

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

## **Section 2. Notice**

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

City: Right-of-Way Specialist  
Public Works Department - Transportation  
City of Auburn  
25 West Main Street  
Auburn, WA 98001-4998  
Telephone: (253) 931-3010; Fax: (253) 931-3048

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

Grantee: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Site No. City of Auburn Wireless Franchise Agreement (WA)  
1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Dept – Network Operations  
Site No. City of Auburn Wireless Franchise Agreement (WA)  
208 S. Akard Street  
Dallas, TX 75202-4206

B. Any changes to the above-stated Grantee information shall be sent to the City at City's notice addresses, referencing the number of this Ordinance.

C. The City may also contact Grantee at the following number during normal business hours and for emergency or other needs outside of normal business hours of the Grantee: (800) 832-6662.

### **Section 3. Term of Agreement**

A. This Franchise shall run for a period of five (5) years, from the effective date of this Franchise specified in Section 5.

B. Renewal Option of Term: The Grantee may renew this Franchise for one, additional five (5) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth in that section (currently not more than 240 and not less than 180 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials deemed necessary by the City to address changes in the Grantee Facilities or Telecommunications Services, or to reflect specific reporting periods mandated by the ACC.

C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

### **Section 4. Definitions**

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Ordinance No. 6727  
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For the purpose of this agreement:

- A. "ACC" or "City Code" means the Auburn City Code.
- B. "Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.
- C. "Franchise Area" means all present and future Rights-of-Way as defined in Section 4.H. herein, within the City Limits as they currently exist or as amended in the future.
- D. "Grantee Facilities" means any and all equipment, appliances, attachments, appurtenances and other items necessary for Telecommunications Services or "personal wireless services" as defined in RCW 80.36.375 or 35.99.010(7), respectively, that are located in the Right-of-Way. It includes microcell, minor and small cell facilities and strand-mounted units.
- Grantee Facilities do not include anything used to provide wireline services, front-haul or back-haul services, including fiber optic cables, coaxial cables, wires, conduit or other equipment, appliances, attachments and appurtenances. They do not include any equipment that is not within ten (10) feet of the pole (excluding any strand-mounted unit) or base station, or that is not within the Right-of-Way, or that is covered under a separate Franchise Agreement or agreement.
- E. "Grantee's Wireless Telecommunications Services" means the transmission and reception of wireless communications signals, including but not limited to personal wireless and data communications services, over Licensee's federally licensed frequencies, pursuant to all the rules and regulations of the Federal Communications Commission, and in accordance with the terms of this Agreement, for the benefit of wireless communications subscribers in and around the Franchise Area.
- F. "Maintenance" or "maintain" shall mean examining, testing, inspecting, repairing, maintaining, restoring and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.
- G. "Relocation" means permanent movement of Grantee Facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

H. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, shoulders, curbs, landscaping areas between sidewalks and curbs or shoulders, and other public rights-of-ways and similar public properties and areas to the extent that the City has the authority to grant permission to use any of the foregoing. It does not include structures, including poles and conduit, located in the right-of-way and, any other property owned by the City in its proprietary capacity.

## **Section 5. Acceptance of Franchise**

A. This Franchise shall not become effective until Grantee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 15, (3) the financial guarantees specified in Section 16, and (4) payment of any outstanding application fees per the City Fee Schedule. These four items shall collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, the City's grant of the Franchise will be null and void.

## **Section 6. Location, Siting, Construction and Maintenance**

A. The Grantee shall apply for, obtain, and comply with the terms of all permits, approvals and facilities lease agreements as required under ACC Chapters 12.24, 13.32A and 20 for any work done within the Right-of-Way or to site Grantee Facilities on any facilities, structures or poles owned by third parties within the Right-of-Way or on any City-owned facilities, structures or poles within the Right-of-Way. City Council authorizes the Director of Public Works or the Director's designee to negotiate and execute all agreements necessary for the use of City owned property. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner.

Grantee shall be required to submit the appropriate application to the City related to siting within the public Right-of-Way as provided under this Franchise, for review and approval by the City Engineer, prior to submitting an application for a construction permit(s) for any and all locations in the public Right-of-Way, whether Grantee is proposing to locate on City owned facilities, structures or poles, or on third party owned facilities, structures or poles. The siting application shall be submitted to the City and shall be in addition to any other required permits for construction, building, land use, zoning, lease agreements or other approvals as required by applicable City Code.

B. Grantee agrees to coordinate its activities with the City and all other utilities located in the public Right-of-Way within which Grantee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public Right-of-Way and may from time to time, pursuant to and in accordance with the applicable sections of this Franchise or the ACC, require the adjustment, securement, removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.

D. Before commencing any work within the public Right-of-Way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and public places in the Franchise Area to the extent necessary to prevent the branches of those trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost of removal. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land-clearing permit.

## **Section 7. Repair and Emergency Work**

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

## **Section 8. Damages to City and Third-Party Property**

Grantee agrees that if any of its actions under this Franchise impairs or damages any property, Grantee will restore, at its own cost and expense, the property to a safe condition. Upon returning property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). Such repair work shall be performed and completed to the satisfaction of the City Engineer.

## **Section 9. Location Preference**

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

B. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities. For development of new areas, the City, in consultation with Grantee and other telecommunication and utility purveyors or authorized users of the Rights-of-Way, will develop guidelines and procedures for determining specific telecommunications and utility locations.

## **Section 10. Grantee Information**

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. This information shall include, at a minimum, as-built drawings of Grantee Facilities, including installation inventory, and maps and plans showing the location of existing Grantee Facilities and planned Grantee Facilities(to the extent that maps and plans showing planned facilities are available) within the Rights of Way. This information

may be requested either in hard copy or electronic format, compatible with the City's data base system, as now or hereinafter exists, including the City's Geographic Information System (GIS) data base. Upon the City's request, Grantee shall inform the City of its long range plans for installation, if such plans are available, so that the City may coordinate any future development with Grantee's proposed designs. If such plans are not immediately available, are not finalized, or are proprietary in nature, then Grantee is under no obligation to provide such information to the City. Should the Grantee fail, for any reason, to provide information regarding its long range plans or planned Grantee Facilities upon the City's request, then the City is under no obligation to coordinate with, account for or authorize their facilities in future Right-of-Way projects or the City's long range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City; however, nothing in this Section shall be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards to protect the confidential or proprietary nature of the information. Accordingly, in the event the City receives a public records request under applicable state or federal law, the City agrees to notify the Grantee of such request related to the Grantee, and to give the Grantee ten (10) working days to obtain an injunction prohibiting the release of the records.

C. Grantee shall defend, indemnify and hold the City harmless for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's public records act, provided the City has notified Grantee of the pending request.

## **Section 11. Relocation of Grantee Facilities**

A. Pursuant to Auburn City Code Chapter 13 and Chapter 20 as currently written or as amended in the future, except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Right-of-Way.

B. If securement, adjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs.

## **Section 12. Abandonment and or Removal of Grantee Facilities**

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

B. Grantee may ask the City in writing to abandon, in whole or in part, all or any part of the Grantee Facilities. Any plan for abandonment of Grantee Facilities must be approved in writing by the City, which approval shall not be unreasonably withheld.

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

## **Section 13. Undergrounding**

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

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

## **Section 14. Indemnification and Hold Harmless**

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, contractors and employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities including attorneys' fees arising out of or in connection with the Grantee's performance (including Grantee's agents' or representatives' performances) under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the sole negligence or willful misconduct of the City or its officers, officials, agents and employees. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the

event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials or employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence or willful misconduct of the City, or its employees, contractors and agents performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services with regard to work performed by or at the direction of Grantee. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.

E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of indemnity claims made by the City against Grantee or claims made by Grantee's employees directly against the City. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **Section 15. Insurance**

A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its officers, officials, and employees in the amounts and types set forth below:

1. Commercial Automobile Liability insurance ISO Form CG 00 01 covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident including contractual liability. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form used by Grantee, so long as it provides equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$5,000,000.00 each occurrence for bodily injury and property damage and, \$5,000,000.00 general aggregate including \$5,000,000.00 products-completed operations aggregate limit, premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability coverage. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be included as an additional insured as their interest may appear under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise by means of a blanket additional insured endorsement using ISO Additional Insured Endorsement for Ongoing Operations, CG 20 10 10 01 and Additional Insured Completed Operations Endorsement, CG 20 37 10 01, or substitute endorsements utilized by Grantee providing equivalent coverage.

3. Professional Liability insurance with limits of \$1,000,000.00 per claim and aggregate covering the negligence, acts, errors, and/or omissions of Grantee in the performance of professional services under this Franchise.

4. Workers' Compensation coverage (or qualified self-insurance coverage) as required by the Industrial Insurance laws of the State of Washington.

B. The insurance policies shall:

1. Provide that the Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. Upon receipt of appropriate notice from its insurer(s), Grantee shall provide the City with thirty (30) days prior written notice of cancellation or nonrenewal of any of the required insurance policies that are not replaced.

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



D. Verification of Coverage. Grantee shall furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the blanket additional insured endorsements evidencing the insurance requirements of Grantee before commencement of the work.

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

## **Section 16. Performance Security**

The Grantee shall provide the City with a bond or financial guarantee in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City, for all of the Grantee Facilities in the City. If Grantee fails to substantially comply with any one or more of the provisions of this Franchise, the City shall recover jointly and severally from the Grantee, bond or any surety of such financial guarantee, any actual and direct damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs and the cost of removal or abandonment of facilities. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute a material breach of this Franchise. Such a bond or financial guarantee shall not be construed to limit the Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

## **Section 17. Successors and Assignees**

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally.

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

C. Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and

conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

E. Transactions between affiliated entities are not exempt from the required City approval. Grantee shall promptly notify the City in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Notification shall include those items set out in subsection 17.C (1) through (3) herein above.

## **Section 18. Dispute Resolution**

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

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

## **Section 19. Enforcement and Remedies**

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through negligence, or should it fail to heed or comply

with any notice given to Grantee under the provisions of this Agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of receipt of written notification. If the parties determine the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty-day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification (2) terminate Franchisee's use of the specific portion(s) of the ROW to which the default(s) pertains at the discretion of the City Engineer, or (3) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the bond or financial guarantee set forth in Section 16 for every day after the expiration of the cure period that the breach is not cured.

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

## **Section 20. Compliance with Laws and Regulations**

A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise (collectively, "Laws"). Furthermore, notwithstanding any other terms of this Agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any 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 a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days or within such other timeframe as

determined by the City, of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification. The City shall retract its notice of termination if the City determines that the Grantee is in compliance with the amendment or modification within such 30-day period. The City may grant longer than the 30-days to comply if the Grantee provides notice to the City of its intent to comply and can demonstrate good-faith efforts to reach compliance to the satisfaction of the City.

## **Section 21. License, Fees, Tax and Other Charges**

Grantee shall pay promptly and before they become delinquent, all fees and charges for all applicable permits, licenses and construction approvals imposed by the City for Grantee's permitted use of the Grantee Facilities within the Rights-of-Way. This Franchise shall not exempt the Grantee from any future license, fee, tax, or charge, which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

## **Section 22. Consequential Damages Limitation**

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

## **Section 23. Severability**

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

## **Section 24. Titles**

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

## **Section 25. Implementation.**

The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directions of this Franchise.

## **Section 26. Effective date.**

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Ordinance No. 6727  
July 30, 2019  
Franchise Agreement No. FRN19-0014  
Page 15 of 17

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

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

\_\_\_\_\_  
Shawn Campbell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven L. Gross, City Attorney

Published: \_\_\_\_\_

Exhibit A

STATEMENT OF ACCEPTANCE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

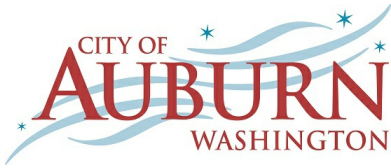
On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared, \_\_\_\_\_ of \_\_\_\_\_ the company that executed the within and foregoing instrument, and acknowledged the said instrument to be 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: \_\_\_\_\_



## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Ordinance No. 6732 (Tate)

**Date:**

September 10, 2019

**Department:**

Community Development

**Attachments:**

[Item 2 Ordinance 6732 HB 1406 Authorization](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Schedule Resolution 5454 and Ordinance 6732 for City Council action on September 16, 2019.

**Background Summary:**

On July 22, 2019 staff provided City Council with an overview of HB 1406 which allows cities to capture a portion of sales tax that is already being levied and collected provided that it is used to support affordable housing objectives. If adopted, the City of Auburn will capture approximately \$155,000 annually that can be directed towards a variety of affordable housing initiatives. City Council expressed support for staff to prepare the requisite resolution and ordinance for future consideration of adoption.

Pursuant to the legislation, a local municipality must adopt (1) a Resolution of intent to authorize the maximum capacity of the tax (Resolution 5454), and (2) legislation (e.g. an Ordinance) to authorize the maximum capacity of the tax (Ordinance 6732). HB 1406 does not preclude a local municipality from taking both actions on the same date which is why staff has provided both items. It is important to note that Council would have to take action on the Resolution first and Ordinance second.

If the Ordinance is adopted, Chapter 3.60 of the Auburn City Code will be amended to include language that authorizes the capture of state sales tax revenues for a twenty year period of time. It also clarifies that these funds must be used for affordable housing objectives that are consistent with HB 1406.

Also, if Ordinance 6732 is adopted, City staff will follow the procedures outlined in HB 1406 for proper notification to the Washington State Department of Revenue.

Resolution 5454 and Ordinance 6732 were presented to City Council during the September 9, 2019 Study Session. City Council requested that both matters move forward to the September 16, 2019 City Council meeting for consideration of adoption.

**Reviewed by Council Committees:**

**Councilmember:** DaCorsi

**Staff:**

Tate

**Meeting Date:** September 16, 2019

Item Number: ORD.B



**ORDINANCE NO. 6732**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
AUBURN, WASHINGTON RELATED TO SALES AND USE  
TAXES; AUTHORIZING AN ADDITIONAL SALES AND USE TAX  
FOR AFFORDABLE AND SUPPORTIVE HOUSING, AND  
AMENDING CHAPTER 3.60 OF THE AUBURN CITY CODE

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) (“SHB 1406”); and

WHEREAS, SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction, or rehabilitation of affordable housing or facilities providing supportive housing, for the operations and maintenance costs of affordable or supportive housing, or, if eligible, for providing rental assistance to tenants, when that use is for persons whose income is at or below sixty percent of the King County median income; and

WHEREAS, the tax will be credited against state sales taxes collected within the City and, therefore, will not result in higher sales and use taxes within the City and will represent an additional source of funding to address housing needs in the City; and

WHEREAS, on October 22, 2018 city staff informed City Council that the City of Auburn’s adopted 2015 Comprehensive Plan Housing Element indicates that there are at least 2,430 dwelling units in Auburn where more than 30% of household income is dedicated to rent or mortgage payments. This means that there is a need to take action to create, preserve and promote opportunities for more affordable housing within the community; and

WHEREAS, believing that imposing the sales and use tax will help address this need and will benefit Auburn residents, the Auburn City Council adopted Resolution 5454 on September 16, 2019 declaring its intent to authorize the maximum capacity of the tax, which meets the statutory requirement to adopt a resolution of intent within six months of the effective date of SHB 1406; and

WHEREAS, the City Council of the City of Auburn has determined that it is in the best interest of the City to enact legislation that authorizes a sales and use tax for affordable and supportive housing.

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

**Section 1. Amendment to City Code.** Sections 3.60.010 and 3.60.020 of the Auburn City Code are amended as shown in Exhibit A.

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

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

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

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

**CITY OF AUBURN**

\_\_\_\_\_  
NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shawn Campbell, MMC, City Clerk

\_\_\_\_\_  
Steven L. Gross, City Attorney

PUBLISHED: \_\_\_\_\_

### **3.60.010 Imposition of tax.**

A. There is imposed a sales or use tax, as the case may be, as authorized by RCW 82.14.030(2), upon every taxable event, as defined in RCW 82.14.020, occurring within the city. The tax shall be imposed upon and collected from those persons from whom the state sales tax or use tax is collected pursuant to Chapters 82.08 and 82.12 RCW.

B. There is imposed an additional sales or use tax upon every taxable event, as defined in RCW 82.14.020, occurring within the City, as authorized by Laws of the State of Washington, Chapter 338, §1. Money collected under this subsection must be used solely, as required by Laws of 2019, Ch. 338, § 1 (or as may be amended in the future), for the purpose of providing rental assistance, or for acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385, or funding the operations and maintenance costs of new units of affordable or supportive housing. This additional sales or use tax shall expire 20 years after the first date it is first imposed. (Ord. 3822 § 1, 1982.)

### **3.60.020 Rate of tax imposed.**

A. The rate of the tax imposed by ACC 3.60.010 A shall be one-half of one percent of the selling price or value of the article used, as the case may be; provided, however, that during such period as there is in effect a sales tax or use tax imposed by King County under Section 17(2), Chapter 49, Laws of 1982, First Extraordinary Session at a rate equal to or greater than the rate imposed by this section, the county shall receive 15 percent of the tax imposed by ACC 3.60.010; provided further, that during such period as there is in effect a sales tax or use tax imposed by King County under Section 17(2), Chapter 49, Laws of 1982, First Extraordinary Session at a rate which is less than the rate imposed by this section, the county shall receive from the tax imposed by ACC 3.60.010 that amount of revenues equal to 15 percent of the rate of the tax imposed by the county under Section 17(2), Chapter 49, Laws of 1982, First Extraordinary Session.

B. The rate of the tax imposed by ACC 3.60.010B shall be the greater of 0.0073 percent of the selling price or value of the article used, or the maximum rate allowed to the City under Laws of 2019, Ch. 338, § 1 (or as may be amended in the future). (Ord. 4176 § 1, 1986; Ord. 3938 § 1, 1984; Ord. 3822 § 2, 1982.)