	<p><b>City Council Study Session Muni Services SFA</b>  <b>July 22, 2019 - 5:30 PM</b>  <b>City Hall Council Chambers</b>  <b>AGENDA</b>  <b>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**

- A. Roll Call

**II. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS**

**III. AGENDA ITEMS FOR COUNCIL DISCUSSION**

- A. Annual DOE Report – Boeing Plume (Tate) (15 Minutes)  
Washington State Department of Ecology (DOE) Report to City Council on the Boeing Plume
- B. Summary of House Bill 1406 Enacted in 2019 (Tate) (15 Minutes)  
Washington State Legislature enacted HB 1406 which allows cities to capture a portion of State Sales Tax if directed towards affordable housing objectives.
- C. Ordinance No. 6721 (Gaub) (5 Minutes)  
An Ordinance of the City Council of the City of Auburn, Washington, granting Seattle SMSA Limited Partnership, a Delaware Limited Partnership, D/B/A Verizon Wireless, a franchise for wireless telecommunications facilities
- D. 2018 State of Our Streets Summary (Gaub) (15 Minutes)

**IV. MUNICIPAL SERVICES DISCUSSION ITEMS**

- A. Animal Control Update (Pierson) (15 Minutes)
- B. Resolution No. 5445 (Pierson) (15 Minutes)  
A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to execute an Interlocal Agreement among the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and the Washington State Department of Corrections, for the continued operation of the Tahoma Narcotics Enforcement Team

**V. OTHER DISCUSSION ITEMS**

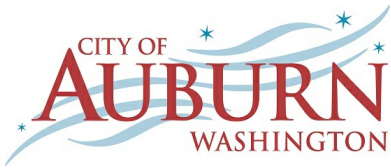
**VI. NEW BUSINESS**

**VII. MATRIX**

A. Matrix

VIII. ADJOURNMENT

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



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Annual DOE Report – Boeing Plume (Tate) (15 Minutes)

**Date:**

July 15, 2019

**Department:**

Community Development

**Attachments:**

[City Council Updates of Boeing Site](#)  
[DOE Presentation](#)

**Budget Impact:**

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

**Administrative Recommendation:**

For Discussion Only.

**Background Summary:**

Since 2012 DOE and Boeing have been studying surface and ground waters in the cities of Algona and Auburn to understand the impacts and remediation options associated with the “Boeing Plume”. Boeing historically treated, stored, and disposed of hazardous waste at its Auburn facility. Contamination includes traces of metals, petroleum, hydrocarbons, and solvent chemicals that are most likely associated with a degreaser at the site. The Boeing Plume originates from the Boeing Fabrication Site in Auburn and flows north and northwest away from the property into portions of southwest Auburn and northeast Algona.

**Reviewed by Council Committees:**

**Councilmember:** DaCorsi

**Staff:** Tate

**Meeting Date:** July 22, 2019

Item Number:



## Boeing Auburn Cleanup - 2019 Update

- I'm Christa Colouzis with the Department of Ecology. I oversee contaminated site cleanups for the Hazardous Waste Program at the NWRO, one of those sites is Boeing Auburn.
- This is Robin Harrover, she's our cleanup site manager for Boeing Auburn.
- This presentation is for you, so please feel free to interrupt with comments or questions anytime!



## Boeing built planes at Auburn



When you're building planes you don't just put pieces together. You've got to **MAKE** the pieces.

Metal pieces are machined into the right shape, and while the metal is cut, it is sprayed with coolant. It's messy, in the past there was just a trench in the concrete floor to contain the chips and coolant. (Now each machine has a non-leaking sump and lots of them even have plexiglass "walls" to keep spray and chips in).

## Vapor Degreasers – used TCE



After machining, the part is slippery, so it needs to be cleaned. The cleaner of choice (not just at Boeing Auburn – but EVERYWHERE) until about 1992 was vapor degreasing with TCE.

## Metal pieces are treated



Metal parts are dipped into different solutions...often acidic solutions with dissolved metals...those treatments are done to make the part tougher, stronger, more weather resistant.

# Contamination Happened

Liquid wastes were held in concrete sumps & trenches




Over time, concrete cracks. The liquids went through the cracks and contaminated the soil under the concrete, and eventually, the groundwater under the soil.

## New Contamination is Avoided

- Boeing follows the hazardous waste regulations



Production processes have changed to prevent pollution, reduce product use and spills. Wastes are now managed according to strict regulations to avoid contaminating the environment.

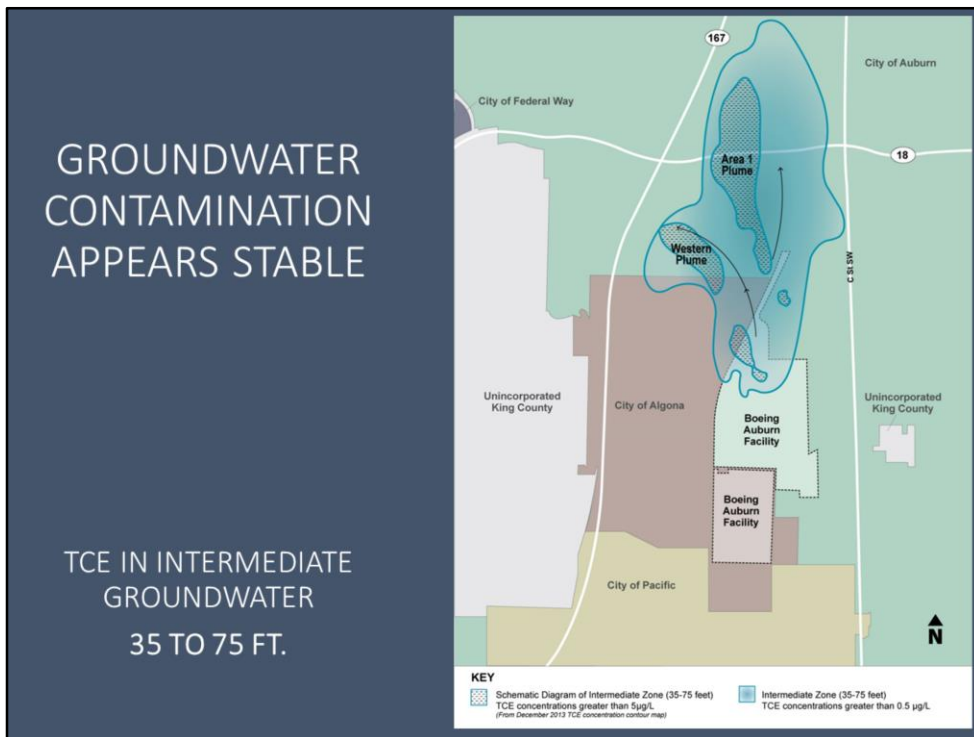


## The Bottom Line

- We've studied groundwater, soil, and air.
- People are NOT being exposed to unhealthy levels of chemicals.
- We enforce contamination cleanup even when people are not in danger.

Boeing put in about 300 monitoring wells to sample groundwater:

- People are not being exposed to unhealthy levels of the chemicals.
- We even studied the air in people's homes who lived above contaminated groundwater.
- We enforce cleanup because it is the law.



- The contaminated groundwater flows north and northwest from Boeing under southwest Auburn and northeast Algona.
- Most of the contamination is between 35 and 75 feet below ground.
- The concentrations of chemicals (TCE and VC) are either not changing, decreasing or not detected at most of the site's wells.
- We think the plume is stable.
- We continue to monitor the plume.





- Drinking water is safe
- Drinking water for the City of Algona and Auburn comes from municipal wells.
- Those wells are located east of the plume and are not impacted by the groundwater contamination.
- The groundwater flows away from the wells.
- Municipal drinking water is regularly tested and monitored by the Department of Health.

*[This map shows the contaminated groundwater plume in the Deep zone is 80-100 ft. Drinking water wells take water from there and deeper]*





## Drinking water

- Public drinking water is monitored by the Washington Department of Health.
- The contaminated groundwater is a safe distance from the public water supplies and is not moving towards drinking water wells.

## Vegetables and fruits

- The water in your garden hose is drinking water and is safe.
- AND, these chemicals (TCE and breakdown product VC) do not build up in plant tissue

## Pets and wildlife

- We tested water samples from ditches, ponds, yard water and other surface water for contamination. The concentrations are low and will not harm wildlife or pets.

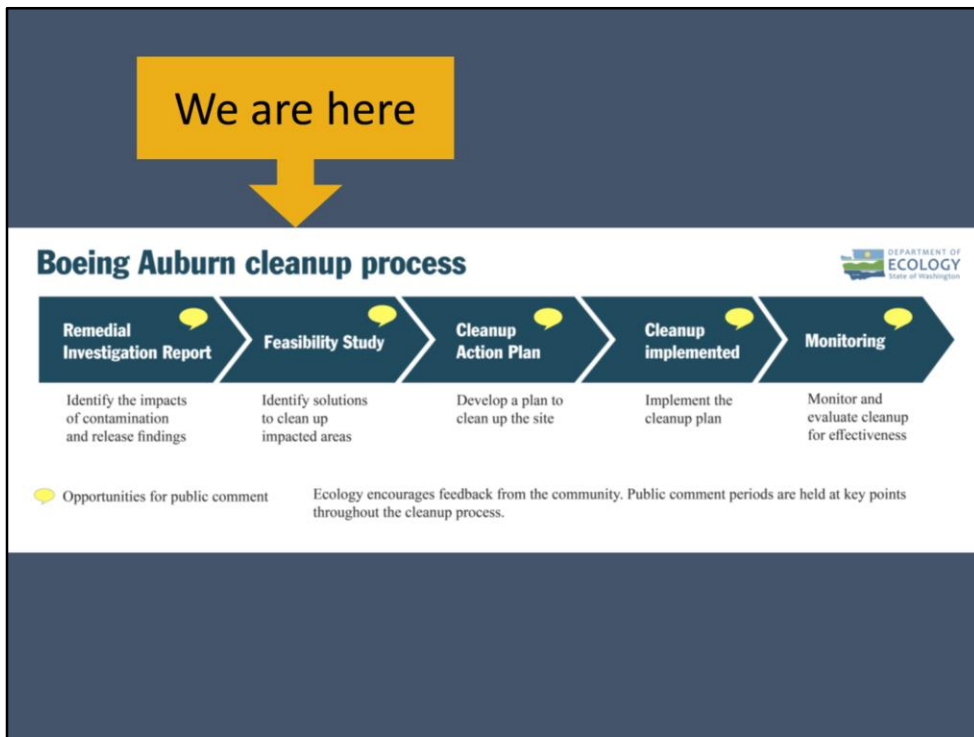
BECAUSE AT AUBURN THE GROUNDWATER ENTERS  
SURFACE WATER, BOEING MUST MEET THE  
SURFACE WATER STANDARD



Because this groundwater eventually discharges to Mill Creek, the clean up law says we must protect surface water to the 'surface water quality criteria'. That is a level **stricter** than the drinking water standard. Normally, groundwater must be cleaned up to the drinking water standard....For TCE, drinking water standard is 4 ppb.

BUT, here, Boeing must meet the surface water quality criteria, which for TCE is 0.3 ppb (more than ten times **STRICTER** than the drinking water level).

We have not found contamination in Mill Creek or the wetlands. We know that Mill Creek is high priority for the salmon that migrate to Peasly Canyon.



This graphic does a great job of showing the steps in the cleanup process.

In the next step, the **Feasibility Study Report**, Boeing will propose how they will cleanup the site. Ecology has the final say about how clean is clean.

We expect the feasibility study to be out for public comment in early 2020. Boeing asked for the cleanup standard to be set before they did the feasibility study. Ecology gave them the cleanup standard on June 28<sup>th</sup>.

As a reminder, Boeing pays for the cleanup.



The previous slide implies that all the steps are equal. And they just aren't. Not in effort, time or cost. The investigation and characterization of the site, the first step (**Remedial Investigation**) takes a lot of effort, and quite some time. After you know what you're dealing with, you study how to fix it (**Feasibility Study**). Then you choose options from the feasibility study and put them into an options package which is your **Cleanup Action Plan**. Then you do it (**Implementation**), and **Monitor** until it's clean. Monitoring can take a long time too, but it isn't much work, effort or money (compared to the remedial investigation).



The feasibility study finds the best cleanup option(s) for a site.

- To figure out what methods to use, you need to know what you're trying to achieve. Boeing Auburn asked for Ecology to set the cleanup standards so they could pick the right treatment technologies. Normally, groundwater is cleaned up to the drinking water standard (4 ppb TCE). However, since here the groundwater is discharging to surface waters, Ecology must apply the surface water quality criteria to the groundwater. (TCE .3 ppb).
- Our clean up law has a way to deal with this, where we set a "conditional compliance point" near the surface water and clean up to drinking water standard before that point and make sure that the groundwater meets surface water quality criteria at the 'conditional point' before it gets to the creek.
- However, that 'conditional point of compliance' requires property owners in between Boeing and the creek to give **written approval**. And there are hundreds of people who would have to agree in writing that their property could be cleaned up to the drinking water standard instead of the surface water standard. Boeing and Ecology **agree** that this is probably unworkable because it would take so long to get written consent from so many people.

# What Cleanup Methods will be investigated?

Ecology has identified four technologies that are likely to be in the feasibility study: Monitored Natural Attenuation, Enhanced Bioremediation, Chemical Treatment, and Dynamic Groundwater Recirculation.



## MONITORED NATURAL ATTENUATION



This is not a 'do nothing' option. Wetlands are one of nature's ways of cleaning water because they are rich in the bacteria that breakdown chemicals. Those bacteria also live in soil and water underground – and can break down chemicals into non-toxic end products. Monitored natural attenuation keeps track of the natural degradation of contaminants to make sure it is happening fast enough and that the environment is protected.

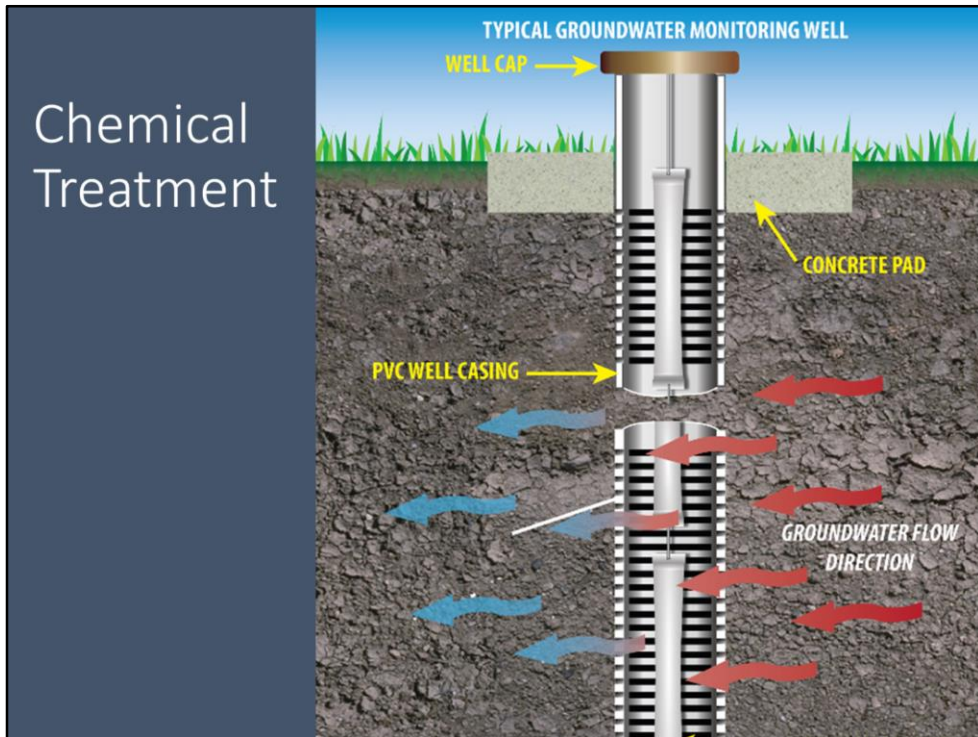
## ENHANCED BIOREMEDIATION



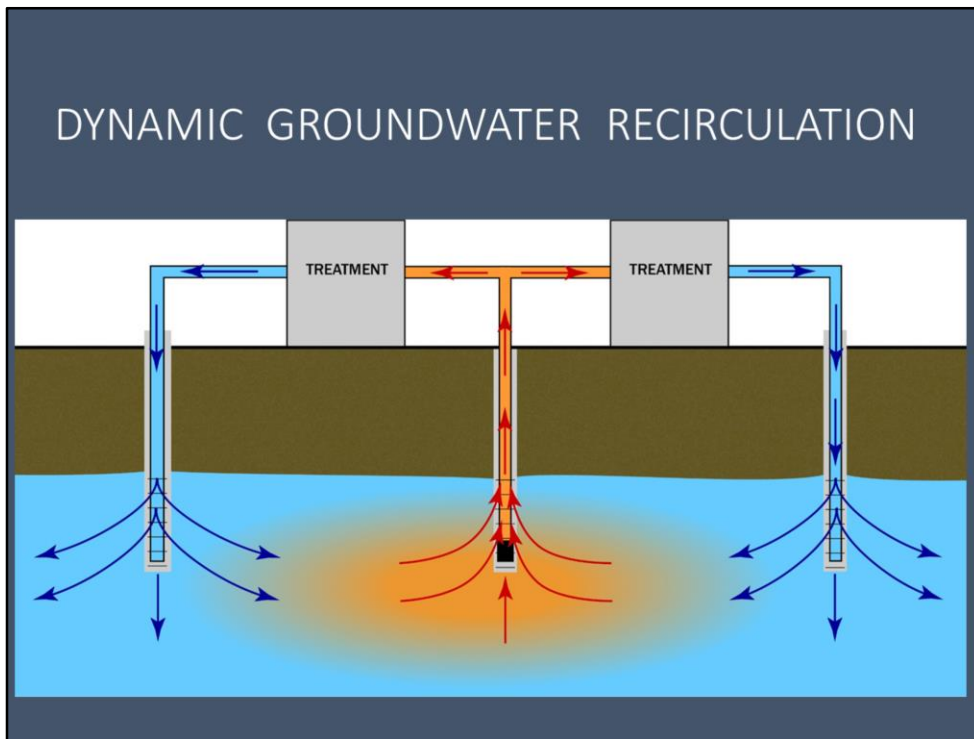
Enhanced Bioremediation involves “helping out” the bacteria by giving them food or ‘friends’ to speed up natural degradation. Bacteria “food” is often similar to people food, things like vegetable oil, whey protein, or molasses – bacteria and bacteria food are injected into the ground water through existing wells.



## Chemical Treatment



Another clean up method for TCE is to put chemicals into the wells that react with TCE to make it less toxic. The chemicals that work on TCE and VC include strong oxidizers, like permanganate, and iron metal.



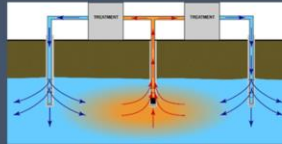
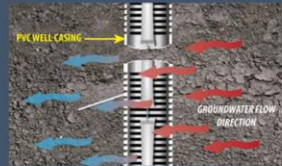
In dynamic groundwater recirculation, contaminated groundwater is pumped out of the ground and treated. The clean, treated groundwater is then reinjected into the ground, to flush contamination and then is recaptured and retreated. The process continues until the contamination is clean.

## EXAMPLE CLEAN UP OPTIONS

### OPTION A



### OPTION B



Several cleanup methods can go into one clean up option, sort of like options packages on new cars. The feasibility study ranks the combinations. For example, one option might use enhance bioremediation in one place and monitored natural attenuation elsewhere. The next option 'package' might combine chemical treatment, dynamic groundwater recirculation, and monitored natural attenuation. The feasibility study weighs the pros and cons of different options to find the best one. The time it will take to reach the cleanup levels is a key piece of the evaluation. Cost is also considered, but remedies can't be excluded just because they cost a lot.

# COMMUNITY OUTREACH

Algona Days – Aug 4, 2018



***Ecology plans to be at Algona days again this summer!***

COMING UP!

**Cleanup Options Workshop** - We plan to explain the methods proposed to clean up the site and how they work.

**Feasibility Study public comment period** - Early 2020.



We will have opportunities for the public to ask questions and get prepared for the public comment period on the feasibility study.

We want to explain the different cleanup technologies. And so far, we are calling that a 'technologies workshop'

We want people to understand the proposed cleanup methods, how they work and how long they take to work.

Those workshops explaining cleanup methods would be just before and/or during the feasibility study comment period.





CHRISTA COLOUZIS, PE  
CHRISTA.COLOUZIS@ECY.WA.GOV 425-649-7181

Please do not hesitate to contact us if you have questions.



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# Boeing Auburn Fabrication Site Cleanup

Hazardous Waste and Toxics Reduction Program



## Project Background

In parts of Auburn and Algona, groundwater, water that flows under the ground through soil, is contaminated with a chemical called trichloroethene (TCE) and volatile organic compounds (VOCs) from the Boeing Auburn Fabrication Facility. Boeing used the chemicals during its operations from the mid-1960s until the late 1980s. Ecology is overseeing Boeing's investigation of the contamination and will review and select a plan for cleanup. We've gathered underground water samples at hundreds of places to determine the area where groundwater is contaminated. The map to the right shows the extent of the contaminated groundwater which flows north and northwest away from the Boeing property.

### More information

Web: [bit.ly/ECYBoeingAuburn](https://bit.ly/ECYBoeingAuburn)

Hotline: 253-219-7645

### Contact information

Robin Harrover, Site Manager

425-649-7232

[robin.harrover@ecy.wa.gov](mailto:robin.harrover@ecy.wa.gov)

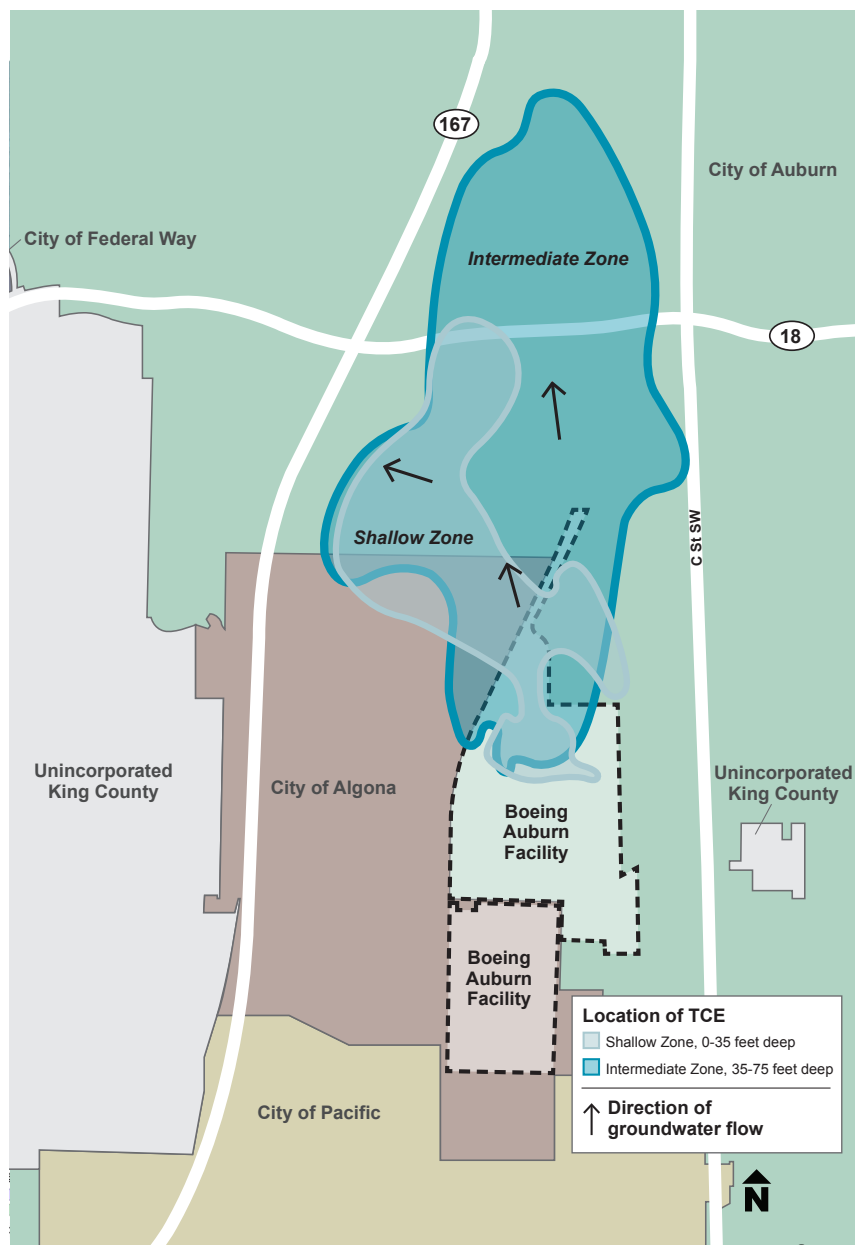
Thea Levkovitz, Outreach Specialist

425-649-7286

[thea.levkovitz@ecy.wa.gov](mailto:thea.levkovitz@ecy.wa.gov)

### Special accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 425-649-7000 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.



### What is TCE?

- An industrial degreaser and volatile organic compound which evaporates easily into the air.
- Also found in common household products like paints, glues, spot removers and pepper spray.
- Able to break down into other chemicals, such as vinyl chloride and less toxic by-products.

### Am I being exposed to contaminants?

**No.** People are not being exposed to unhealthy concentrations of the chemicals. We've studied groundwater, soil and air. We enforce cleanup even when people are not exposed to the contamination.

### Is my drinking water safe?

**Yes.** The water in homes and businesses in the area comes from public water systems that are regularly monitored by the Washington State Department of Health. The contamination discovered to date does not affect drinking water wells, and the groundwater in the area flows away from existing wells.

### Can I eat fruits and vegetables from my garden?

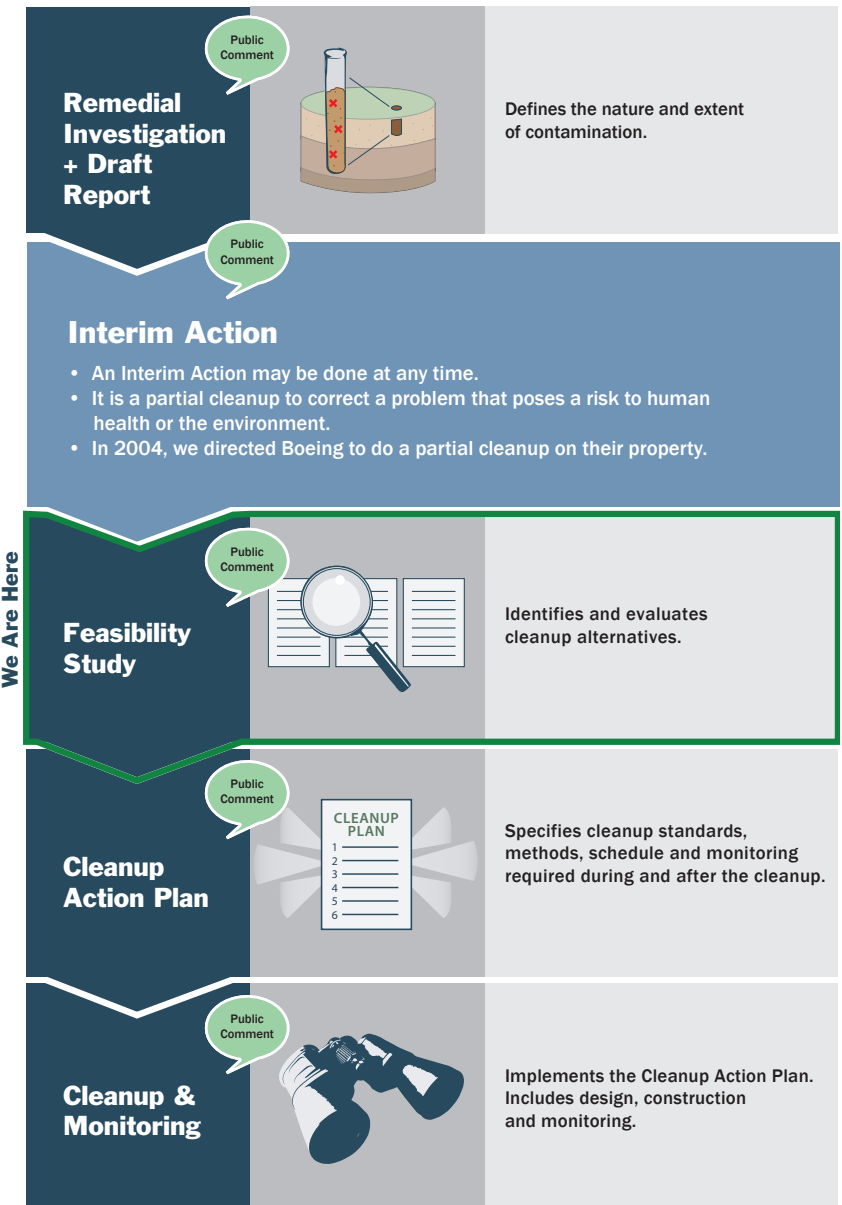
**Yes.** We have studied garden sites in the area and found that the fruits and vegetables growing in them do not pose a threat to people. The chemicals do not build up in the plant or fruit tissue.

### Are my pets safe?

**Yes.** We took samples from surface water (ditches and yards) in Algona and none are high enough to harm wildlife or pets.

## The Cleanup Process

The Boeing Auburn Fabrication Site cleanup must follow the Washington State Model Toxics Control Act (MTCA) cleanup regulations. The MTCA site cleanup process is completed in steps over a variable timeline.



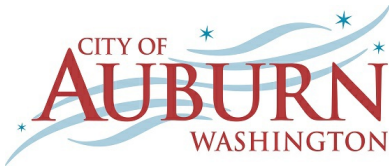
Якщо ви хочете отримати інформацію про забруднення ґрунтових вод у Алгоні та Оберні українською мовою, будь ласка, зателефонуйте 425-649-7181, щоб поговорити зі співробітником Департаменту Екології та перекладачем.

ਅਲਗੋਨਾ (Algona) ਅਤੇ ਔਬਰਨ (Auburn) ਵਿੱਚ ਭੂਮੀਗਤ ਪਾਣੀ ਦੇ ਦੂਸ਼ਣ ਬਾਰੇ ਪੰਜਾਬੀ ਵਿੱਚ ਹੋਰ ਜਾਣਕਾਰੀ ਲਈ, ਕਿਰਪਾ ਕਰਕੇ ਚੌਗਿਰਦਾ ਵਿਗਿਆਨ (Ecology) ਦੇ ਸਟਾਫ ਮੈਂਬਰ ਅਤੇ ਇੱਕ ਦੁਭਾਸ਼ੀਏ ਨਾਲ ਗੱਲ ਕਰਨ ਲਈ 425-649-7181 ਤੇ ਫੋਨ ਕਰੋ।

Para sa higit pang impormasyon tungkol sa pagkakontamina ng groundwater sa Algona at Auburn na nasa wikang Tagalog, mangyaring tumawag sa 425-649-7181 upang makipagusap sa isang miyembro ng kawani ng Ecology at sa isang interpreter.

Para más información en español acerca de contaminación de agua subterránea en Algona y Auburn, por favor llame a 425-649-7181 para hablar con un miembro de personal de Ecología y interprete.





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Summary of House Bill 1406 Enacted in 2019 (Tate) (15 Minutes)

**Date:**

July 16, 2019

**Department:**

Community Development

**Attachments:**

[SKHHP Presentation](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

For Discussion Only.

**Background Summary:**

HB 1406 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.

The attached slide show was presented to South King Housing and Homelessness Partners (SKHHP) during their last meeting on June 28, 2019. The slideshow provides an overview of the details of HB 1406. Some of the highlights of HB 1406 are as follows:

1. HB 1406 goes into effect on July 28, 2019.
2. If a city elects to collect the tax, the authority to collect and use the funds expires after 20 years.
3. HB 1406 allows cities to pursue two collection options:
  - a. Half authority of .0073% (Auburn's estimated revenue would be approximately \$155,000 annually)
  - b. Full authority of .0146% (Auburn's estimated revenue would be approximately \$310,000 annually)
4. Option 3.b requires that the city also adopt a local supplemental sales tax committed to affordable housing objectives.
5. Funds can be used as follows:
  - a. Retained within the city.
  - b. Pooling with other jurisdictions (e.g. SKHHP)
  - c. Bonded against the revenue stream and pledge revenue collected to repay the bonds.
  - d. Ceded to County
6. To activate, city must adopt resolution of intent by January 28, 2020 and adopt final

legislation by July 28, 2020.

**Reviewed by Council Committees:**

**Councilmember:** DaCorsi

**Staff:** Tate

**Meeting Date:** July 22, 2019

Item Number:

# HB 1406 and South King Housing & Homelessness Partnership



## Overview of HB 1406



- This is not an additional tax – local jurisdictions are just retaining a portion of the sales and use taxes already paid.
- Bill goes into effect on July 28<sup>th</sup>, 2019.
- All cities and counties are eligible. If a city and county both act to implement, the bill outlines when a city can claim the full authority. Otherwise it is shared.
- Department of Revenue determines the maximum revenue, based on state fiscal year 2019 taxable retail sales with the county or city.
- Earliest possible use of the funds is fall 2019.
- Authority expires after 20 years and the clock starts ticking on day one!

## Use of the funds



### Bonding and revenue sharing:

- Cities or counties imposing the tax may issue general obligation or revenue bonds and may pledge the revenue collected for repayment of the bonds.
- A county or city may enter into an interlocal agreement with other local government or public housing authorities to pool the tax receipts received and pledging those taxes to bonds.

## Definitions



- Maximum or full authority = .0146%
- Half or split authority = .0073%
- Participating City/Participating County:  
Any city or county that opts into the revenue is considered a “participating” city or county.
- Qualifying Local Tax:  
A city that has implemented, or implements within year one, a “qualifying local tax” is eligible to claim the full authority.

## Qualifying local taxes



“Qualifying local taxes” means the following tax sources, if the tax source is instated by a city no later than July 27<sup>th</sup>, 2020 (within one year of the bill’s effective date):

- The affordable housing levy authorized under RCW 84.52.105;
- The levy authorized under RCW 84.55.050 if used solely for affordable housing;
- The sales and use tax for housing and related services authorized under RCW 82.14.530 if the city has imposed the tax at a minimum or least half of the authorized rate;
- The sales tax for chemical dependency and mental health treatment services or therapeutic courts authorized under RCW 82.14.460.

## Maximum Authority 0.0146 percent



The maximum authority of 0.0146 percent can be reached either by a city and county each claiming half (0.0073 percent), or by one of the entities claiming the whole.

Following are the circumstances in which the full 0.0146 percent can be claimed by a county:

- Counties always maintain authority over unincorporated areas and can levy the maximum authority in those areas within the first year.
- Counties can levy the maximum authority in the boundaries of cities that declare that they will not levy it or who don't otherwise utilize it within the first year.



## Maximum Authority 0.0146 percent



Following are the circumstances in which the full 0.0146 percent can be claimed by a city:

- Cities can levy the maximum authority if they have levied one of the qualifying local taxes before or within the first year.
- Cities can levy the maximum authority in year one without a qualifying local tax only if a county declares they will not participate or otherwise fails to adopt a resolution.

## One important exception



Cities without a local qualifying tax in non-participating counties in year two lose authority due to a mistake in the bill.

This will not pertain to any cities in King County as long as King County participates.

## Expected revenue



The Department of Revenue is directed to cap the yearly revenue rate based on collections during the fiscal year ending June 30, 2019. *The numbers below are based on 2018 and are provided only as an example.*

Auburn	Burien	Covington	Des Moines	Federal Way	Kent	Normandy Park	Renton	Tukwila	King County (includes all city shares)
\$154,992	\$65,477	\$43,678	\$29,793	\$124,142	\$185,467	\$4,866	\$236,380	\$162,046	\$5,052,967
\$309,984	\$130,953	\$87,356	\$59,586	\$248,284	\$370,935	\$9,732	\$472,760	\$324,093	\$10,105,933

## Half Authority 0.0073 percent



- A city without a qualifying local tax that takes action in year one has access to half the authority when their county also participates.
- Counties can claim half of the authority within the jurisdiction of any city only if that city does not have a qualifying local tax, but otherwise participates.

## Timelines



- Resolution of Intent must be adopted by January 28, 2020.
- The legislation must be adopted by July 28, 2020.
- Department of Revenue requires 30-days notice of adoption of sales tax credits and the change must occur on a first day of the month (RCW 82.14.055)
- Considering the necessary actions, the earliest possible use of the funds is this fall.

## Decision Points: Use of Funds



Ask: What is better overall for affordable housing?

Options to consider:

- Pooling of funds between jurisdictions (MOU),
- Bonding against the revenue stream,
- Cities ceding authority to county under certain agreed upon terms.

## Decision Points: Use of Funds



HB 1923 and Housing Action Plan planning grants for cities:

- Many cities will have housing money for the first time and a plan how to spend it will be incredibly helpful.
- Cities are eligible for a \$100k planning grant. Application guidelines are being developed by the Department of Commerce.
- Cities are required to include affordable housing advocates in development of the plan.



## Additional Resources



- HB 1923 planning grant contact: Dave Andersen, Department of Commerce: 509-434-4491 and [Dave.Andersen@commerce.wa.gov](mailto:Dave.Andersen@commerce.wa.gov)
- Pacifica Law Group free brown bag on July 23 at their offices in Seattle: 1191 2nd Avenue, Suite 2000 Seattle.
- Department of Revenue has indicated that they are creating factsheets – the Housing Alliance will post them on our website when they are available.

## Additional Resources



- Housing upcoming webinar on passing a qualifying local tax!
- Get on the Housing Alliance's 1406 Stakeholder list!
- Michele Thomas  
[micheleT@wliha.org](mailto:micheleT@wliha.org)  
[www.wliha.org](http://www.wliha.org)





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Ordinance No. 6721 (Gaub) (5 Minutes)

**Date:**

July 16, 2019

**Department:**

Public Works

**Attachments:**

[Draft Ordinance No. 6721](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

Discussion of Draft Ordinance No. 6721 for Franchise Agreement No. FRN19-0013 for Seattle SMSA Limited Partnership, dba Verizon Wireless

**Background Summary:**

Seattle SMSA Limited Partnership, dba Verizon Wireless has applied for a Franchise Agreement to be able to construct within the City's rights-of-way a small wireless facilities network. Seattle SMSA 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 on Lea Hill 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 Public Hearing to consider this application and hear public comment is scheduled before the City Council on August 5, 2019 in accordance with Auburn City Code Chapter 20.06.030.

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

Gaub

**Meeting Date:** July 22, 2019

Item Number:

## **ORDINANCE NO. 6721**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING SEATTLE SMSA LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, A FRANCHISE FOR WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless ("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 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 Telecommunications Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and 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: 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 Verizon Wireless  
Attn: Pacific Market General Counsel  
15505 Sand Canyon Avenue  
Irvine, CA 92618

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: 800-264-6620.

### **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**

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 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 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 or contributed to by the 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 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 assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured 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 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 of any of the insurance policies required herein.

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 not have the right to self-insure any of the above required insurance at any time throughout the life of this Franchise Agreement or the life of the Grantee's Facilities, unless Grantee and City enter into an amendment to this Franchise that provides otherwise. Further, any successors, assignees, transferees, contractors, agents or representatives of the Grantee shall not have the right to self-insure any of the above required insurance at any time throughout the life of this Franchise Agreement or the life of the Facilities.

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, or (2) 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.**

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:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

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

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

Exhibit A

STATEMENT OF ACCEPTANCE

Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, 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.

SEATTLE SMSA LIMITED PARTNERSHIP  
d/b/a Verizon Wireless

By: Cellco Partnership, its General Partner

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared, \_\_\_\_\_ of Cellco Partnership, General Partner of Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless 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

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**Agenda Subject:**

2018 State of Our Streets Summary (Gaub) (15 Minutes)

**Department:**

Public Works

**Attachments:**

[2018 State of Our Streets Dashboard](#)

**Date:**

July 17, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

For discussion only.

**Background Summary:**

This is a 2018 year end summary of the City's Arterial and Local Street Pavement Preservation Programs. This year's summary is presented in a dashboard format that will also be incorporated into the City's webpage. This dashboard provides the public with a quick look at the overall condition of the City's roadways and preservation program activities. It also gives City policy makers a quick executive overview in order to help facilitate policy and funding decisions. A separate document, City of Auburn Street Preservation Program Guide, is also available on the City's website that provides a more in depth explanation of the City's street preservation programs including program history, funding, and technical considerations.

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

Gaub

**Meeting Date:** July 22, 2019

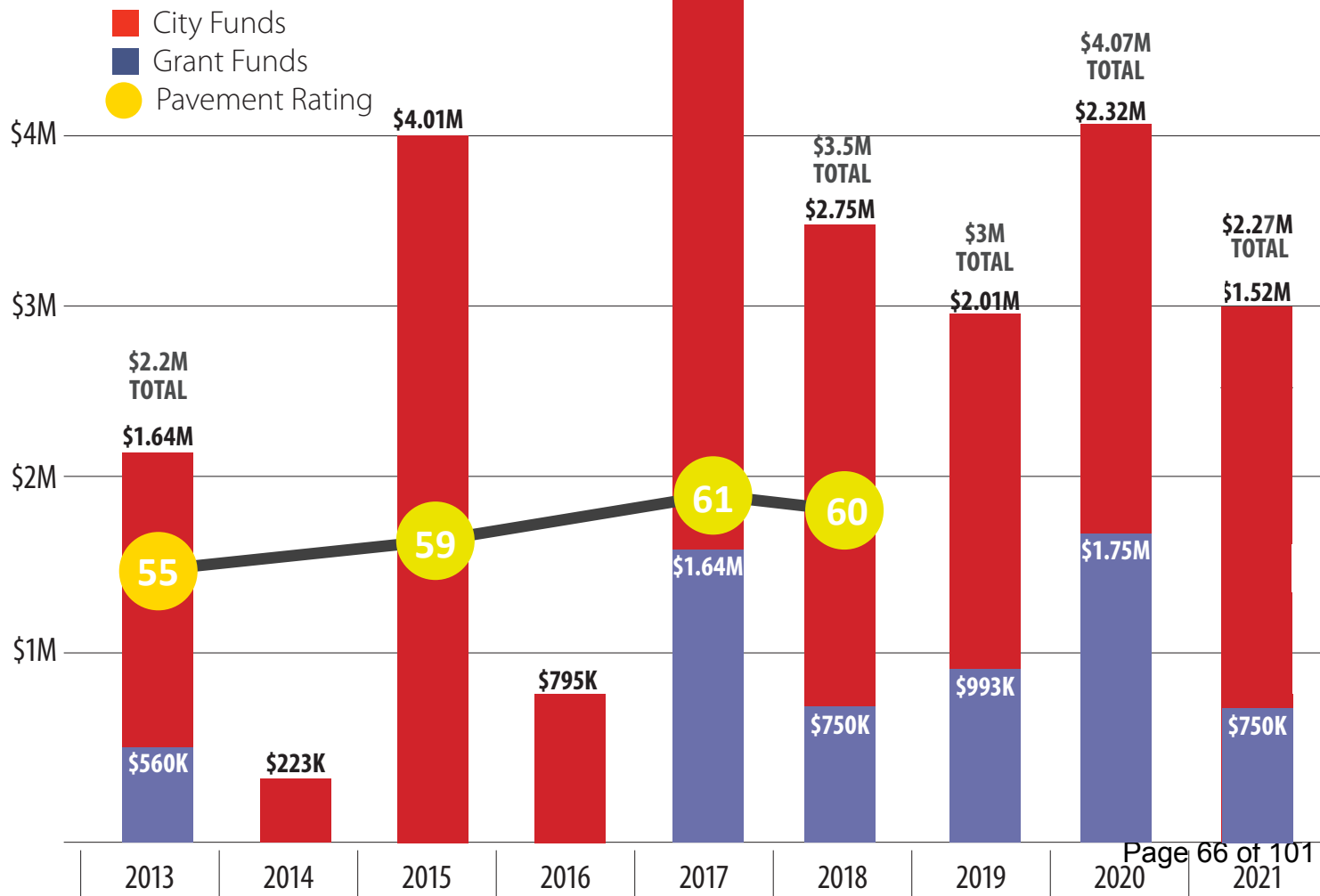
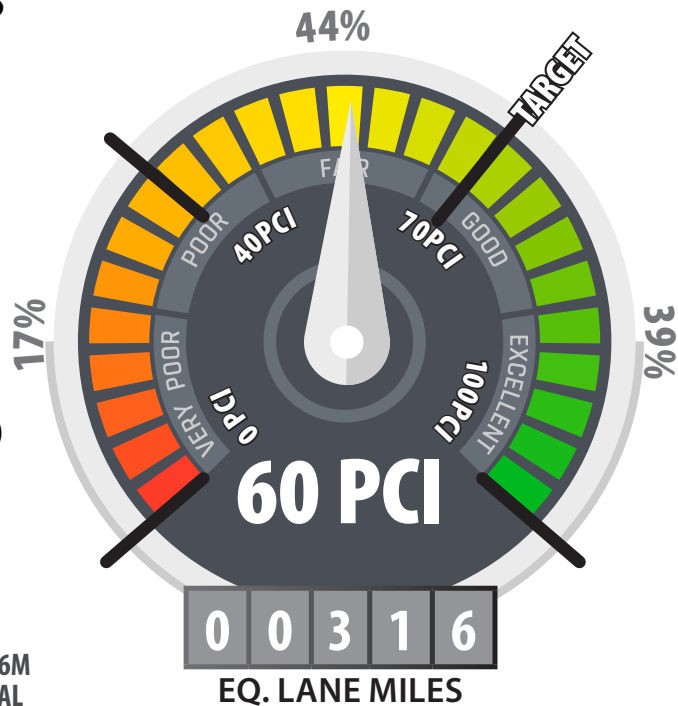
Item Number:

# 2018 STATE OF OUR STREETS DASHBOARD

There are 91 equivalent lane miles of collector streets with an average PCI of 64. There are 225 equivalent lane miles of arterial streets with an average PCI of 60. The average condition rating for arterial and collector streets combined is 60, which has increased from 55 in 2013 indicating that prior and present re-building and preservation efforts have improved overall conditions. However, the 70 PCI target has not yet been reached, and will not be reached without increased sustainable funding. The average condition dropped from 61 in 2017 to 60 in 2018, which could be due to variations between inspected and estimated PCI ratings or could indicate additional funding is needed to sustain a stable PCI rating.

**Funding Note:** The arterial and collector preservation programs rely heavily on grant funding. No grant funding has currently been secured beyond 2021.

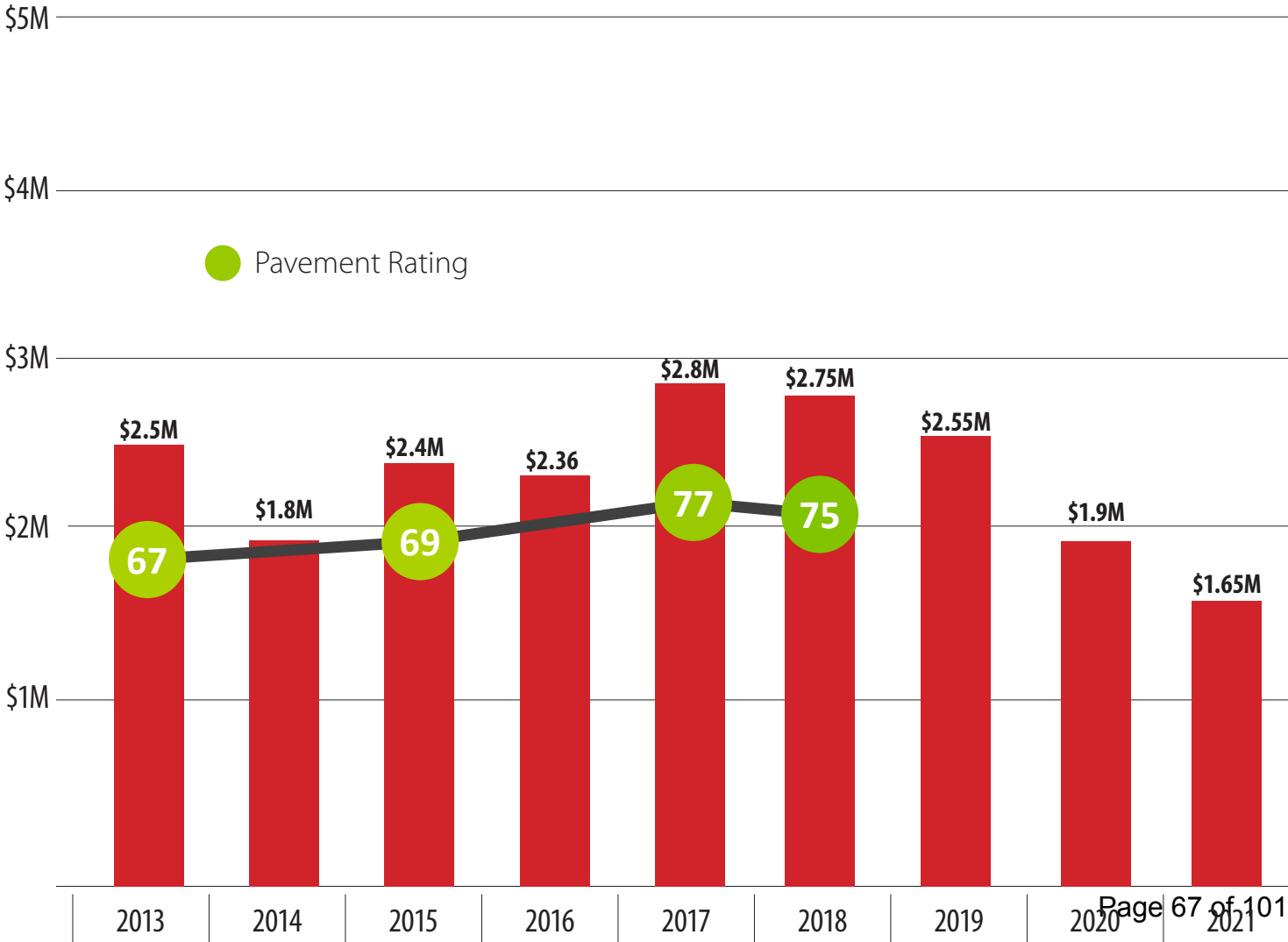
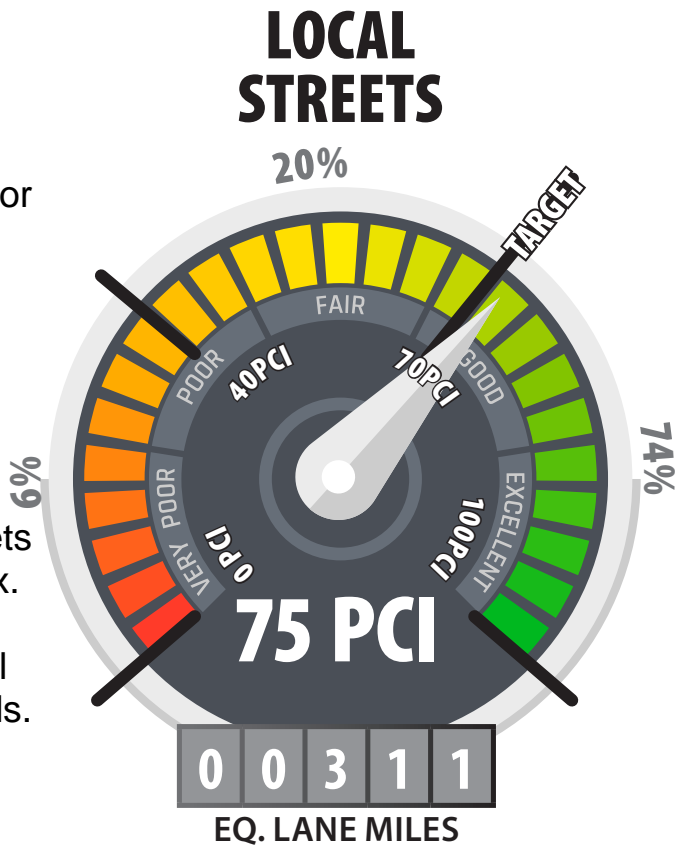
## ARTERIAL & COLLECTOR STREETS



# 2018 STATE OF OUR STREETS DASHBOARD

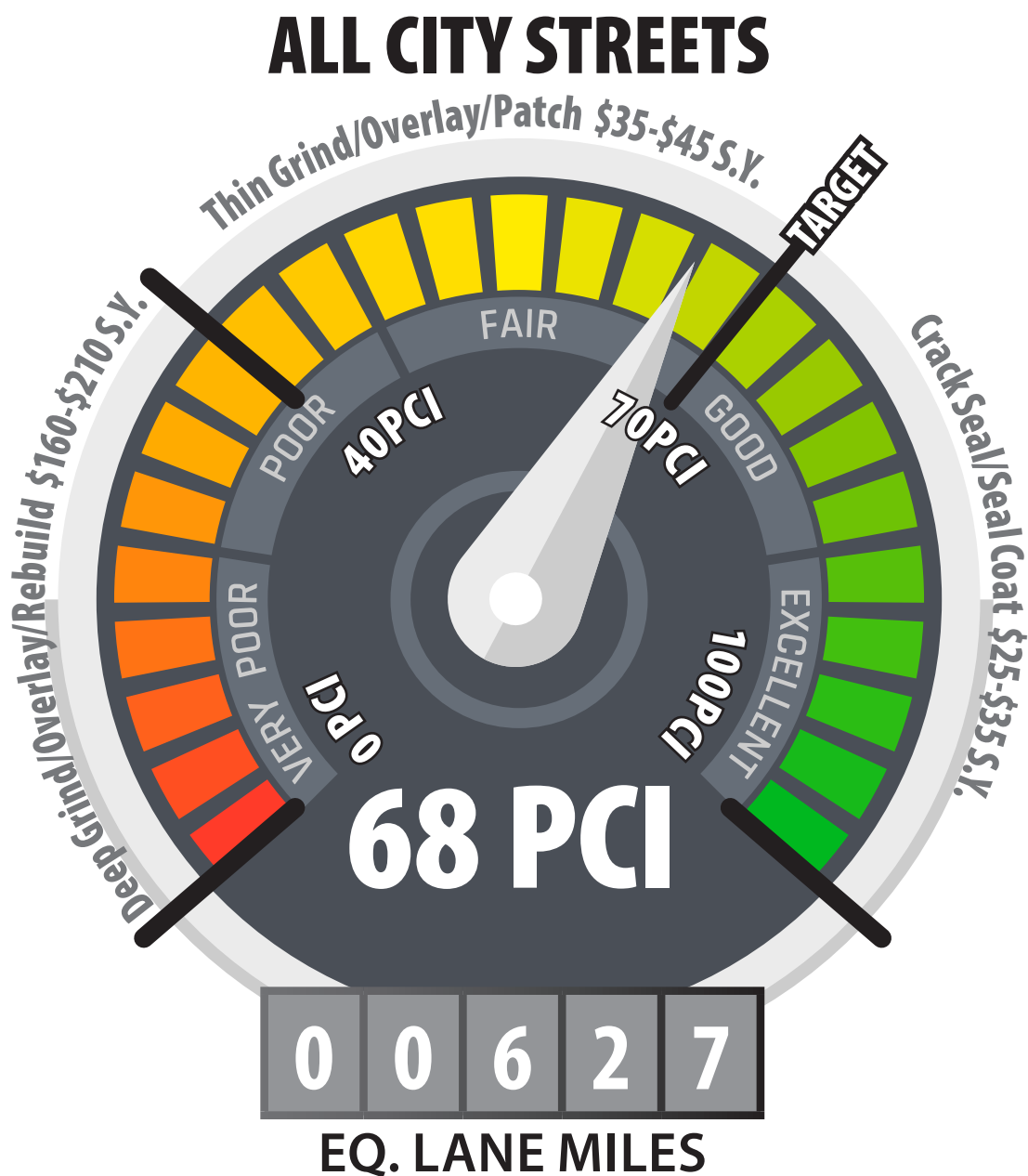
The average condition rating for local streets of 75 is slightly above the City's goal of 70. This rating has increased from 67 in 2013, which indicates prior and present re-building and preservation efforts have been effective. However, the average condition has dropped from 77 in 2017 to 75 in 2018. This could be due to variations between inspected and estimated PCI ratings or could indicate additional funding is needed to sustain a stable PCI rating.

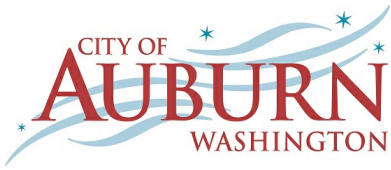
**Funding Note:** From 2013 to 2019, the local streets program was funded by new construction sales tax. In 2019 and 2020, the program is spending down the program fund balance with some supplemental funding from Real Estate Excise Tax (REET) funds. Funding source(s) for the program in 2021 and beyond have not yet been identified.



# 2018 STATE OF OUR STREETS DASHBOARD

Overall Assessment: Despite the completion of several large paving projects in 2018, the overall condition of streets in the City degraded slightly from 2017 to 2018. A portion of this decline may be due to the 2018 ratings being estimated using approximate methods while the 2017 ratings were physically inspected and calculated. The pavement ratings will be physically inspected in Summer 2019 and the estimated pavement ratings adjusted accordingly. Regardless, the ratings indicate that additional funding is needed for our preservation programs to continue re-building poor/very poor streets and preserving fair/good streets.





## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Animal Control Update (Pierson) (15 Minutes)

**Department:**

Police

**Attachments:**

[Animal Control Update](#)

**Date:**

July 17, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

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

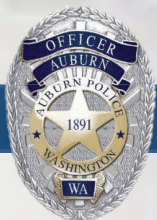
**Meeting Date:** July 22, 2019

**Staff:**

Pierson

Item Number:





Courage Honor Integrity Professionalism

A faded background image showing two animal control officers standing next to a white van. The officer on the left is wearing a tan uniform and a cap, while the officer on the right is wearing a dark uniform. The van has "ANIMAL CONTROL" and "CITY OF ALBANY" written on its side.

# Animal Control

**A Year in Review**

**By:**

**ACO Peckham & ACO Cattaneo**

# Overview

- **Dangerous Dogs**
- **Injured Animal Cost**
- **Pet Licensing**
- **Calls/Reports/Infraction Stats**
- **Exotic/Wild Animals**

# Dangerous Dogs

- 6 Dangerous Dogs Registered
- 9 Designated Potentially Dangerous Dogs by Act
- Countless Potentially Dangerous Dogs by Breed
- Valley Communications List
- K-Drive List
- Requirements
- Classification Procedure/Process

**\*\*Most Dangerous Dogs are surrendered for Euthanasia, the above stat reflects dogs that are kept and have met the requirements for owning a Dangerous Dog and are currently active**



## Dangerous or Potentially Dangerous?



# Injured Animal Cost

- **Injured Dogs/Cats are brought into Sumner Veterinary for treatment or euthanasia, the approximate cost is:**
  - **\$1,500 from June 1, 2018 to June 1, 2019**

# Licenses

- There are 4190 current Licenses
- Licensing is handled by AVHS
- 6 month puppy license \$15
- 1 year unaltered \$60
- 1 year altered \$30
- Service Dogs Free
- Senior discount

The background of the slide is a faded photograph of two police officers standing next to a white patrol car. The officer in the foreground is wearing a dark uniform and a cap, while the officer behind him is in a light-colored uniform. The car has "POLICE" and "SHERIFF" markings on its side.

# Calls/Reports/Citations

- **ACO Calls: 3,917**
- **Patrol Animal Calls: 476**
- **Impounds: 448 animals**
- **Seizures: 72**
- **Reports: 103**
- **Infractions: 230**
- **Arrests: 14**
  
- **June 1, 2018 to June 1, 2019**



# Strays

- 286 dogs and cats
- Pocket pets
- Others
- Location Held
- June 1, 2018 – May 31, 2019

# Exotic/Wild Animals

Throughout the year we have come up close and personal with numerous exotic or wild animals. To name a few:

- Owls, Raptors
- Opossums, Raccoons
- Exotic Pheasants
- Parrots, Parakeets
- Turtles, Snakes, Frogs, Iguana
- Crows, Ducklings, Goslings

What do we do with them?

## Animal Control Officer Sarah Cattaneo

- Started May 1, 2018
- 6 years ACO experience in CA
- 6 years shelter supervisor in CA
- 20+ years dog training
- Working on CPDT and Behavior Certs
- 3 years emergency responder
- B.S. Animal Science, CSU Chico
- 20 years large animal experience
- 2 years vet assistant





# Animal Control Officer Ray Peckham

- Ray began his career with Auburn on January 8<sup>th</sup>, 2018.
- Over 15 years of Dog Training/Handling
- 7 years of extensive dog behavior interpretation
- Shelter experience including euthanasia
- Expert knowledge of animal microchipping/process/behind the scenes





## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Resolution No. 5445 (Pierson) (15 Minutes)

**Department:**

Police

**Attachments:**

[TNET Resolution 5445](#)

[TNET Final](#)

**Date:**

July 18, 2019

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

For discussion only

**Background Summary:**

Auburn has participated in a narcotics enforcement team with other Pierce County jurisdictions, and the state Department of Corrections, since 1986. The participants work with each other and a Drug Enforcement Administration Task Force to effectively investigate and enforce criminal laws relating to controlled substances.

This new ILA replaces and updates the original 1986 Agreement. It clarifies certain roles and responsibilities among the participants to be consistent with current state and federal laws and policies. It gives the Executive Board the authority to manage the day-to-day operations of the Task Force. It also updates the procedures for processing claims against the Task Force or its members.

This ILA has been reviewed by the chief law enforcement officers and legal counsel for all of the participants, as well as by WCIA.

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

Pierson

**Meeting Date:** July 22, 2019

Item Number:

## **RESOLUTION NO. 5445**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT AMONG THE CITIES OF AUBURN, BONNEY LAKE, LAKEWOOD, PUYALLUP, AND TACOMA, AND THE PIERCE COUNTY SHERIFF, PIERCE COUNTY PROSECUTING ATTORNEY, AND THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS, FOR THE CONTINUED OPERATION OF THE TAHOMA NARCOTICS ENFORCEMENT TEAM

WHEREAS, the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and The Washington State Department Of Corrections share a common interest in investigating and enforcing the criminal laws related to controlled substances; and

WHEREAS, the parties in some combination have worked together since 1986 as a multi-jurisdictional task force, the Tahoma Narcotics Enforcement Team ("TNET") towards this purpose; and

WHEREAS, the parties agreed that the terms of the original ILA needed to be updated to reflect best practices and changes to applicable.

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

**Section 1.** The Mayor is authorized to execute an Interlocal Agreement among the cities of Auburn, Bonney Lake, Lakewood, Puyallup, and Tacoma, and the Pierce County Sheriff, Pierce County Prosecuting Attorney, and The Washington State Department Of Corrections for the continued operation of the Tahoma Narcotics Enforcement Team, which agreement will be in substantial conformity with the agreement attached as Exhibit A.

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

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

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF AUBURN

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

ATTEST:

APPROVED AS TO FORM:

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

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

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
THE CITY OF AUBURN, CITY OF BONNEY LAKE, CITY OF LAKEWOOD, CITY OF  
PUYALLUP, CITY OF TACOMA, PIERCE COUNTY SHERIFF,  
PIERCE COUNTY PROSECUTING ATTORNEY, &  
WASHINGTON STATE DEPARTMENT OF CORRECTIONS

**TAHOMA NARCOTICS ENFORCEMENT TEAM**

**I. PARTIES**

The parties to this Agreement are the cities of Auburn, Bonney Lake, Lakewood, Puyallup, Tacoma, the Pierce County Sheriff's Department, the Pierce County Prosecuting Attorney, & the Washington State Department of Corrections.

**II. AUTHORITY**

This Agreement is entered into pursuant to Chapters 10.93, 39.34, and 53.08 of the Revised Code of Washington.

**III. PURPOSE**

The parties wish to establish and maintain a multi-jurisdictional team to effectively investigate and enforce the criminal laws relating to controlled substances. Individual employees participating in Tahoma Narcotics Enforcement Team ("TNET") are also assigned to a Drug Enforcement Administration (DEA) Task Force, known as DEA Group D-25, by separate agreement. This agreement is necessary and intended for the primary purpose of performing the administrative functions related to seizures and forfeitures under state law by the parties that may arise in support of the members' participation in the activities of DEA Group D-25.

**IV. FORMATION**

This Agreement will serve to update the terms and membership of the multi-jurisdictional task force originally formed in 1986. All prior Agreements relating to the formation and operation of TNET are hereby terminated and replaced by this Agreement. The team established by this Agreement will be known as the Tahoma Narcotics Enforcement Team ("TNET"), which was originally established in 1986. The members of TNET shall be the cities of Auburn, Bonney Lake, Lakewood, Puyallup, Tacoma, the Pierce County Sheriff's Department, the Pierce County Prosecuting Attorney, and the Washington State Department of Corrections. The future admission or elimination of a jurisdiction as a member of TNET may be accomplished by an addendum to this Agreement.

All assets acquired under the former TNET Agreement(s) shall remain the property of TNET and shall be retained and distributed per the terms of this Agreement.



TNET does and must operate confidentially and without public input. Therefore, the parties to this Agreement do not intend for this Agreement to create a separate legal entity subject to suit.

## **V. STATEMENT OF PURPOSE**

Municipalities within the Puget Sound region have experienced an increase in urbanization and population densities. The ability to address crimes associated with controlled substances may stretch the resources of individual Police Department specialty units.

In 1989, the Washington State Legislature found that drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities. These findings hold true to this day.

Prior to the formation of TNET, law enforcement efforts directed at dealing with controlled substances crimes were, for the most part, conducted by law enforcement agencies working independently. A multi-jurisdictional effort to handle specific and complicated narcotics investigations has resulted in more effective pooling of personnel, the improved utilization of scarce funds, a reduction in the duplication of equipment, improved training, and a development of specialized expertise.

The formation of TNET has resulted in improved services for all the participating entities, increased safety for officers and the community, and improved cost effectiveness.

## **VI. TNET OBJECTIVES**

Personnel from each participating jurisdiction who are assigned to TNET will form a combined investigation team. Each police officer is assigned to TNET via this Agreement, and TNET is accordingly assigned to the DEA through individual jurisdiction agreements with DEA Group D-25.

The objective of TNET is to provide enhanced and more efficient use of personnel, equipment, budgeted funds, and training. The combined TNET or individual detectives shall respond as able and as approved by the DEA Supervisor when requested by any of the participating agencies. TNET may be available to outside law enforcement agencies as permitted by laws relating to mutual aid and as approved by the DEA.

## **VII. DURATION/TERMINATION**

The minimum term of this Agreement shall be one year, effective upon its adoption. This Agreement shall automatically renew, and TNET shall automatically continue in existence, for consecutive one-year terms without action of the legislative bodies of the participating jurisdictions, and unless and until terminated pursuant to the terms of this Agreement.

A jurisdiction may withdraw its participation in TNET by providing written notice of its withdrawal and serving such notice upon each Executive Board member of the remaining jurisdictions. A notice of withdrawal shall become effective 90 days after service of the notice on all participating members. The withdrawal of an individual jurisdiction from TNET shall not result in the termination of TNET.

If TNET withdraws its participation in the DEA Task Force, this Agreement and thus TNET shall remain in effect unless terminated as provided in this Agreement

TNET may be terminated by a majority vote of the Executive Board or by action of the majority of the legislative bodies of the participating jurisdictions. Any vote for termination by the Executive Board shall occur only when the police chief, Sheriff, or Prosecutor of each participating jurisdiction is present at the meeting in which such vote is taken.

## **VIII. TASK FORCE AGREEMENT**

Unless TNET is terminated, each Board member shall, on an annual basis, affirm its jurisdiction's continued participation in TNET for the following year. Upon affirmation of the participation of each jurisdiction, TNET shall execute a task force agreement with DEA affirming the continuation of agency participation in TNET, and such task force agreement shall, on an annual basis, be forwarded to the US Department of Justice, Asset Forfeiture Money Laundering Section.

## **IX. GOVERNANCE**

The affairs of TNET shall be governed by an Executive Board ("Board,") whose members are composed of the police chief/sheriff, or designee, from each participating jurisdiction and the Prosecuting Attorney, or designee. One member of the Board shall be elected by the Board to serve as Chair. Elections shall occur on an annual basis and the Board may either re-elect the existing Chair or elect another member of the board to serve as Chair for the following year. The Chair shall preside over Board meetings, prepare an agenda, lead discussions at meetings and serve as the point of contact for the DEA Supervisor of Group 25.

Each member of the Board shall have an equal vote on all Board decisions. Board decisions shall be made by a majority vote of the Board members, or their designees,

appearing at the meeting in which a decision is made. A majority of Board members or their designees, must be present at each meeting for any action taken to be valid.

The Board shall meet quarterly, unless otherwise determined by the Board. The Chair, or any Board member, may call extra meetings. The Chair shall provide no less than 48 hours' notice of all meetings to all members of the Board; PROVIDED, that in emergency situations, the Chair may conduct a telephonic or electronic (i.e. e-mail) meeting or a poll of individual Board members to resolve any issues related to the emergency, which shall count as a formal vote of the board.

## **X. PERSONNEL**

The following personnel shall serve at the pleasure of the Board. Personnel may be removed for any reason by majority vote of the Board.

TNET Detectives: Each jurisdiction shall contribute one or more full-time commissioned officers to perform investigation work for the Team.

TNET Seizure Officer: A peace officer from a participating agency, who is assigned to TNET, shall be appointed as the Primary Seizure Officer by the Board. The Primary Seizure Officer, or designee, shall be responsible for coordinating the seizure of property for forfeiture under RCW 69.50.505 and shall prepare the Notice of Seizure and Intended Forfeiture for service on the property owner.

Legal Assistant: The TNET Legal Assistant shall be provided by the Pierce County Prosecuting Attorney on a reimbursable basis and shall work under the direction of the Board. The Legal Assistant shall follow all rules and policies of the Prosecutor's Office and shall be evaluated on an annual basis by the Team Chief of the Prosecutor's Drugs & Vice Unit. The Legal Assistant reports directly to the DEA Supervisor of Group D-25 and is responsible for unit accounting, reports, office support, and other duties as appropriate or listed herein. From time to time, the Prosecutor may reassign the designated Legal Assistant and select another qualified Legal Assistant to assume the position on the TNET.

Attorney: The Prosecutor's Office will provide a Deputy Prosecuting Attorney ("DPA") on a part-time basis to represent TNET in civil asset forfeiture hearings. The DPA shall have the discretion to exercise their professional judgment in accepting and litigating TNET civil asset forfeiture cases. The DPA will be responsible for reviewing and prosecuting civil asset forfeiture cases, and providing legal advice regarding same. From time to time, the Prosecutor may reassign the designated DPA and select another qualified DPA to assume the position on TNET.

Employees of Contributing Jurisdictions: The personnel assigned to TNET shall be considered employees of the contributing jurisdiction. That jurisdiction shall be solely

and exclusively responsible for the compensation and benefits for that employee. All rights, duties, and obligations of the employer and employee shall remain with that individual jurisdiction and none of the rights, duties and obligations of the employing jurisdiction shall shift to TNET or any other participating jurisdiction. Each jurisdiction shall be responsible for ensuring compliance with all applicable laws with regard to employees, and with provisions of any applicable collective bargaining agreements and civil service rules and regulations of the employing jurisdiction.

Presiding Officer: The chief law enforcement officer of each law enforcement agency of TNET designates the Pierce County Sheriff, or his designee, to serve as the Presiding Officer before whom civil asset forfeiture hearings will be held as set forth in 69.50 RCW.

## **XI. EQUIPMENT & TRAINING**

Each participating jurisdiction shall provide the equipment of its participating TNET personnel. Each jurisdiction shall provide sufficient funds to update, replace, repair, and maintain the equipment and supplies used by its participating TNET personnel. Each jurisdiction shall provide sufficient funds to provide for the training of its participating TNET personnel.

The equipment, supplies, and training provided by each jurisdiction to its personnel participating in TNET shall be equal to those provided by the other participating jurisdictions.

The Board shall be responsible for recommending the purchase of additional equipment. Title to equipment purchased using TNET funds or forfeited property will be held by the Fiscal Agent or one of the participating jurisdictions as agreed to by the Board. The Board will ensure a record of the transaction is maintained. The Board must approve any joint capital expenditure for TNET equipment of \$1,500.00 or more. Approval for capital expenditures of less than \$1,500.00 may be authorized by the TNET Chair at their discretion.

Any equipment purchased with TNET funds with a value in excess of \$5,000 will be scheduled for insurance purposes by the Fiscal Agent. Any excess cost related to scheduling TNET equipment will be budgeted and reimbursed to the Fiscal Agent. In the event of a loss that is covered by insurance the equipment shall either be replaced utilizing the insurance proceeds or the proceeds distributed in equal shares to the members.

## **XII. FINANCIAL REQUIREMENTS**

TNET utilizes a Fiscal Agent for all account transactions and accounting. One of the Jurisdictions will provide the services of the Fiscal Agent as approved by the Board.

The TNET chair, after consulting with TNET personnel, shall prepare a budget each year, which will be voted on for approval by the Board. The TNET operating budget relies primarily on TNET assets forfeited at the state and federal levels.

Participating Agencies may be reimbursed under Federal Grants. Grant funds are administered by the State of Washington and follow the state budget cycle of July 1 through June 30 of the following year. The Board will designate an Assigned Contractor for the grant. The Contractor will assume responsibility for the distribution of grant funds. Participating agencies shall bill the Contractor monthly. The Contractor, in turn, will bill the State for reimbursement from the grant. Upon receipt of funds, the Contractor shall reimburse the participating agencies. TNET shall fund one full-time legal assistant position from seized and recovered funds.

The DEA shall provide office space, storage space, parking, and phone service at no cost to TNET and the contributing jurisdictions.

### **XIII. DISTRIBUTION OF SEIZURE FUNDS**

The TNET Board provides oversight of seized and forfeited assets via the Fiscal Agent. Forfeited assets may be distributed to participating agencies when deemed appropriate by the Board. The Board will endeavor to maintain adequate financial resources to fund ongoing operations of the TNET.

The Fiscal Agent for TNET shall be designated by a majority vote of the Board. The Fiscal Agent may be changed to another agency within TNET by a majority vote of the Board. The threshold amount will be \$150,000.00. For federal seizures under that threshold, the Fiscal Agent will submit form DAG 71 to DOJ on behalf of TNET. The Fiscal Agent shall establish a special fund designated "Operating fund of TNET joint board" which shall be set up and maintained to hold all monies received from federally forfeited assets. The purpose of this account is to fund TNET's direct operational expenses.

If a single federal seizure is greater than \$150,000.00, then each member agency will prepare and submit their own individual form DAG 71 to DOJ in order to receive a portion of seized funds.

### **XIV. DISTRIBUTION OF ASSETS UPON TERMINATION**

On termination of TNET, each participating jurisdiction shall retain sole ownership of the equipment purchased and provided for its participating TNET personnel.

Any TNET assets shall be equally divided among the participating jurisdictions at the asset's fair market value at the time of termination. The value of the assets of TNET shall be determined by using commonly accepted methods of valuation. If two or more participating jurisdictions desire an asset, the final decision shall be made by arbitration (described below). Any property not claimed shall be declared surplus by the Board and

disposed of pursuant to state law for the disposition of surplus property. Proceeds from the sale or disposition of any TNET property, shall, after payment of any and all costs of sale or debts of the jurisdiction, be equally distributed to those jurisdictions participating in TNET at the time of termination. If one or more jurisdictions terminate their participation in TNET, but TNET continues to exist, the jurisdiction terminating participation shall be deemed to have waived any right or title to any property owned by TNET or to share in the proceeds at the time of termination.

Arbitration pursuant to this section shall occur as follows:

- a. The jurisdictions seeking to acquire an asset shall select an Arbitrator to determine which jurisdiction will receive the property. If the jurisdictions cannot agree to an Arbitrator, the chiefs of the jurisdictions participating in TNET upon termination shall meet to determine who the Arbitrator will be. The Arbitrator may be any person not employed by the jurisdictions that wish to acquire the asset(s).
- b. During a meeting with the Arbitrator, each jurisdiction seeking to acquire the asset(s) shall be permitted to make an oral and/or written presentation to the Arbitrator in support of its position.
- c. At the conclusion of the presentation, the Arbitrator shall determine which jurisdiction is to receive the asset(s). In making this determination, the Arbitrator shall consider each jurisdiction's overall contribution to TNET. The decision of the Arbitrator shall be final and binding and shall not be the subject of appeal or review.

## **XV. LIABILITY, HOLD HARMLESS, AND INDEMNIFICATION**

It is the intent of the participating jurisdictions to provide services of TNET without the threat of being subject to liability to one another, and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with TNET actions that are brought against the jurisdictions. To this end, the participating jurisdictions agree to indemnify and hold harmless each other and to equally share responsibility and liability for the acts and omissions of their participating personnel when acting in the furtherance of this Agreement. If an action is brought against any of the participating jurisdictions, each jurisdiction shall be responsible for an equal share of any award or settlement of claims of damages, fines, fees, costs, and attorney's fees, regardless of which jurisdiction or employee the action is taken against or which jurisdiction or employee is ultimately responsible for the conduct. The jurisdictions shall share equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each jurisdiction named in the lawsuit or claim. This section shall be subject to the conditions and limitation set for in subsections A through F below.

- .
- .
- A. Costs of Defense. All jurisdictions shall contribute equally to the costs of defending any claims or lawsuits, regardless of the allegations. If punitive damages are awarded at trial, that portion of the award shall be the sole responsibility of the entity that employs the individual against whom the punitive damages were awarded.
- B. Collective Representation and Defense. The Board in consultation with each member's insurance or risk pool will select the attorney who will represent the member agencies. All members will contribute equally to paying that attorney. If any agency wants to hire and pay for its own attorney, it may do so, but will continue to be responsible for its share of the attorney selected by the Board.

If the attorney selected by the Board determines there is a potential conflict among members or jurisdictions, it may recommend the retention of conflict counsel for one or more jurisdictions or members. The cost of any conflict counsel will also be shared equally by all jurisdictions.

The "client" of any attorney selected by the Board will be each individual entity (town, city, etc.), as well as each team member, unless an entity specifically declines representation, or conflict counsel is assigned.

- C. Removal From Lawsuit. If a jurisdiction or employee is successful in withdrawing or removing the jurisdiction or employee from a lawsuit by summary judgement, qualified immunity, or otherwise, the jurisdiction shall nonetheless be required to pay its equal share of any award, settlement, costs or attorney's fees as a result of the lawsuit.
- D. Settlement Process. It is the intent of this Agreement that the jurisdictions act in good faith on behalf of each other in conducting settlement negotiations on liability claim or lawsuits so that, whenever possible, all parties agree with the settlement or, in the alternative, agree to proceed to trial. If a claim or lawsuit requires the sharing of liability, no individual jurisdiction shall be authorized to enter into a settlement agreement with a claimant or plaintiff unless all jurisdictions agree with the terms of the settlement. Any settlement made by an individual jurisdiction without the agreement of the remaining jurisdictions, when required, shall not relieve the settling jurisdiction from paying an equal share of any final settlement or award.
- E. No Waiver of Title 51 RCW. This section shall not be interpreted to waive any defense arising out of Title 51 RCW.

- F. Insurance. The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual jurisdiction from its obligations under this Agreement.

## **XVI. NOTICE OF CLAIMS, LAWSUITS, AND SETTLEMENTS**

If a claim is filed, or a lawsuit is brought against a participating jurisdiction or its employees for actions arising out of their conduct in support of TNET operations, the jurisdiction shall promptly notify the other jurisdictions that the claim or lawsuit has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each participating jurisdiction.

Any jurisdiction or member who believes or knows that another jurisdiction would be liable for a claim, settlement, or judgement that arises from a TNET action or operation, shall have the burden of notifying each participating jurisdiction of all claims, lawsuits, settlements, or demands made to that jurisdiction.

## **XVII. PROCESSING OF CLAIMS**

- A. Designation of Lead Jurisdiction. There will be a lead jurisdiction for processing a claim that is filed with and against members for alleged damages and injuries that occur as a result of TNET activities. The lead jurisdiction shall be the jurisdiction within which the action subject to the claim occurred; PROVIDED, that if the jurisdiction within which the action subject to the claim occurred did not participate in the action subject to the claim, the lead jurisdiction shall be the jurisdiction within which the TNET investigation or response originated. If a jurisdiction that was not involved in the action subject to the claim receives the claim, that jurisdiction shall notify the other jurisdictions in accordance with Section XVI of this Agreement and shall use its best efforts to determine who the appropriate lead jurisdiction is. Nothing in this Agreement waives or is intended to change any claim reporting responsibility that any entity has to its insurance carrier or risk pool.
- B. Assistance Responding to Claims. TNET personnel involved in the action subject to the claim shall assist the lead jurisdiction in responding to the claim. The TNET Legal Assistant shall be responsible for gathering all records relating to the claim. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the action subject to the claim. The TNET Legal Assistant shall also provide a list of personnel who participated in the action subject to the claim and their contact information. The TNET Legal Assistant shall deliver all copies of the records to the lead jurisdiction promptly upon request.



C. Claims of \$5,000 or Less

- i. Lead Jurisdiction Responsibilities. The lead jurisdiction shall be responsible for working with the TNET Legal Assistant to gather records relating to the action subject to the claim. The lead jurisdiction shall provide records to its insurance provider or risk pool and shall assist its insurance provider or risk pool in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to liability. In determining whether a claim should be paid, the lead jurisdiction and its insurance provider or risk pool shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.
- ii. Liability Determination – Apportionment of Damages. The lead jurisdiction, with the assistance of its insurance provider or risk pool, shall determine whether a claim has merit and should be paid. If the lead jurisdiction determines that payment of a claim of \$5,000 or less is appropriate, such determination shall be final and binding upon other jurisdictions and payment shall be apportioned equally among all jurisdictions. The insurance provider or risk pool for the lead jurisdiction shall provide full payment to the claimant, and each jurisdiction shall reimburse the insurance provider or risk pool for its equal share of such payment.

Before payment of any claim, and as a condition of payment, the insurance provider or risk pool making payment shall obtain from the claimant a complete and total release of liability on behalf of all jurisdictions participating in TNET and each and every officer, agent, or volunteer of those participating jurisdictions.

If the lead jurisdiction determines that a claim does not have merit, the lead jurisdiction shall notify the other jurisdictions of the determination, which is binding on the other jurisdictions; PROVIDED, any other jurisdiction may determine that payment is appropriate and may pay such claim in full, but will not seek reimbursement from the other participating jurisdictions.

- iii. Letter From Insurance Adjusters. In the event the lead jurisdiction, in conjunction with its insurance provider or risk pool, determines that payment of a claim of \$5,000 or less is appropriate, the insurance provider or risk pool shall provide each of the participating jurisdictions with a letter stating the determination and the bases for such determination.

- D. Lead Jurisdiction Responsibilities. The lead jurisdiction shall schedule a meeting with all jurisdictions participating in TNET to discuss claims over \$5,000 and to determine the appropriate manner in which to respond and/or defend these claims.

The Board and persons listed in Section XIX of the Agreement shall be notified of the meeting.

## **XVIII. PROCESSING OF LAWSUITS**

- A. Notification to Other Jurisdictions. In the event a jurisdiction is served with a lawsuit, that jurisdiction shall provide notice and documentation of the lawsuit to each of the other jurisdictions listed in Section XIX of this Agreement.
- B. Coordination of Initial Meeting. The jurisdiction that initially receives a lawsuit shall schedule a meeting or otherwise communicate with all the jurisdictions participating in TNET to discuss the lawsuit and to determine the appropriate manner in which to respond to and/or defend the lawsuit. The Board and persons listed in Section XX of this Agreement shall be notified of the meeting or other communication.

## **XIX. NOTIFICATION OF CLAIMS & LAWSUITS**

Section XVI of the Agreement requires that the jurisdiction receiving a claim or lawsuit notify the other jurisdictions of the claim or lawsuit and provide documentation of that claim or lawsuit to the other jurisdictions. Nothing in the Agreement shall be deemed a waiver by any participating jurisdictions of the requirements set forth in Chapter 4.96 RCW, and the fact that a participating jurisdiction provides notice or copies of a claim to another jurisdiction shall not constitute a waiver of the requirement that a party who files suit against a jurisdiction first file a claim with the jurisdiction in accordance with Chapter 4.96 RCW. Moreover, nothing in this Agreement shall be deemed acceptance of service of a lawsuit, and the fact that a participating jurisdiction provides notice or copies of a lawsuit to another jurisdiction shall not be deemed adequate service of such lawsuit.

For the purposes of implementing Section XVI of this Agreement, the following persons from each jurisdiction shall receive any required notification or documentation:

### **City of Auburn**

City of Auburn Risk Manager  
25 West Main Street  
Auburn, WA 98001  
253-931-3040

### **City of Bonney Lake**

Bonney Lake Risk Manager  
9002 Main Street E  
Bonney Lake, WA 98391  
(253) 862-8602

### **City of Lakewood**

City of Lakewood Risk Management  
ATTN: Kat St. Pierre  
City Hall, 6000 Main St. SW  
Lakewood, WA 98499  
253-589-2489

### **City of Puyallup**

ATTN: City Attorney  
333 South Meridian  
Puyallup, WA 98371  
253-864-4196

**City of Tacoma**

City of Tacoma  
Office of the City Clerk  
747 Market Street, Room 220  
Tacoma, WA 98402

**Pierce County**

Pierce County Risk Management  
955 Tacoma Avenue South, #303  
Tacoma, WA 98402

**Washington State Dept. of Corrections**

David Phillips  
Program Administrator-Community  
Corrections Division  
360-725-8324

**XX. COMPLIANCE WITH THE LAW**

TNET and all its members shall comply with all federal, state, and local laws that apply to TNET.

**XXI. ALTERATIONS**

This Agreement may be modified, amended, or altered by agreement of all participating agencies and such alteration, amendment or modification shall be effective when reduced to writing and executed in a manner provided for by this Agreement.

It is recognized that during the course of operations, it may become necessary to alter the Terms of the Agreement to provide for efficient operation of TNET and to meet the goals of TNET. It is further recognized that the Board has the expertise necessary to provide for the efficient operation of TNET. To that end, the jurisdictions agree that changes may be made to this Agreement, or addendums added to this Agreement, without prior approval of if the legislative bodies of the jurisdictions on the condition that such changes or addendums shall be effective only by a unanimous vote of all members of the Board.

**XXII. RECORDS**

Each jurisdiction shall maintain records relating to work performed by its employees assigned to TNET when working on non-DEA operations. The TNET Legal Assistant shall maintain records relating to the operation of TNET to the extent required by law. All records shall be available for full inspection and copying by each participating jurisdiction.

### **XXIII. FILING**

Upon execution, this Agreement shall be filed with the Pierce County Auditor or, alternatively, listed by subject on the jurisdiction's website or other electronically retrievable public source.

### **XXIV. SEVERABILITY**

If any part, paragraph, section, or provision of the Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.

### **XXV. MUNICIPAL AUTHORIZATIONS**

This Agreement shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate resolution or ordinance of the governing body of each participating jurisdiction. This Agreement shall be deemed effective as to each jurisdiction upon execution by the authorized representative of that jurisdiction. This Agreement may be executed by counterparts and be valid as if each authorized representative has signed one original document.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Agreement.

#### **City of Auburn**

\_\_\_\_\_  
Print Name: Nancy Backus  
Title: Mayor  
Date: \_\_\_\_\_

#### **City of Bonney Lake**

\_\_\_\_\_  
Print Name: Neil Johnson, Jr.  
Title: Mayor  
Date: \_\_\_\_\_

#### **City of Lakewood**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **City of Puyallup**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **City of Tacoma**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **Pierce County Sheriff's Department**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Pierce County Prosecuting Attorney**

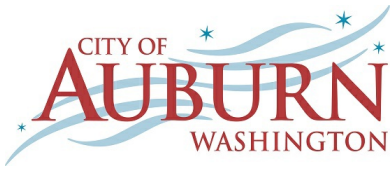
**Washington State Dept. of Corrections**

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Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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Print Name: Debra Eisen,  
Title: Contracts & Regulations Administrator  
Date: \_\_\_\_\_



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Matrix

**Date:**

July 18, 2019

**Department:**

Administration

**Attachments:**

[Special Focus Areas Key](#)

[Matrix](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

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

**Meeting Date:** July 22, 2019

**Staff:**

Item Number:

# SPECIAL FOCUS AREAS

COMMUNITY WELLNESS	FINANCE, TECHNOLOGY, & ECONOMIC DEVELOPMENT	PUBLIC WORKS & COMMUNITY DEVELOPMENT	MUNICIPAL SERVICES
PUBLIC HEALTH AND WELLNESS COMMUNITY & NEIGHBORHOOD SERVICES HOMELESSNESS & HOMELESSNESS PREVENTION HOUSING QUALITY, AFFORDABILITY & ATTAINABILITY HUMAN & SOCIAL SERVICES DOMESTIC VIOLENCE SERVICES COMMUNITY EQUITY	EQUIPMENT RENTAL FACILITIES INNOVATION & TECHNOLOGY CITY REAL PROPERTY BUSINESS DEVELOPMENT SISTER CITIES INTERNATIONAL	UTILITIES TRANSPORTATION SUSTAINABILITY ENVIRONMENTAL PROTECTION CULTURAL ARTS & PUBLIC ARTS PLANNING & ZONING PERMITS & DEVELOPMENT RIGHT OF WAY MANAGEMENT AIRPORT AIRPORT BUSINESS	POLICE SCORE JAIL DISTRICT COURT PARKS & RECREATION ANIMAL CONTROL SOLID WASTE EMERGENCY PLANNING MULTIMEDIA CEMETERY
Councilmember Trout-Manuel, Chair Councilmember DaCorsi, Vice Chair	Councilmember Wales, Chair Councilmember Holman, Vice Chair	Councilmember DaCorsi, Chair Councilmember Baggett, Vice Chair	Councilmember Brown, Chair Deputy Mayor Pelosa, Vice Chair
2019 MEETING DATES February 11, 2019 April 8, 2019 June 10, 2019 August 12, 2019 October 14, 2019 December 9, 2019	2019 MEETING DATES February 25, 2019 April 22, 2019 June 24, 2019 August 26, 2019 October 28, 2019 December 23, 2019	2019 MEETING DATES January 14, 2019 March 11, 2019 May 13, 2019 July 8, 2019 September 9, 2019 November 12, 2019	2019 MEETING DATES January 28, 2019 March 25, 2019 May 27, 2019 July 22, 2019 September 23, 2019 November 25, 2019

## COUNCIL MATRIX

NO.	TOPIC	Chair	STAFF LEAD(S)	STUDY SESSION REVIEW DATE(S)	COUNCIL DISCUSSION SUMMARY	ACTION DATE
1	Auburn Avenue Theater	Chair DaCorsi Vice Chair Baggett	Director Faber	9/9/2019		
2	Metro Bus Barn Site	Chair DaCorsi Vice Chair Baggett	Director Gaub Director Tate	TBD		
3	Funding Options	Chair Wales Vice Chair Holman	Director Coleman	Ongoing		
4	Mandatory City Housing Inspections	Chair Trout-Manual Vice Chair DaCorsi	Director Tate	8/12/2019		
5	No Smoking or Vaping in City Parks	Chair Brown Vice Chair Pelosa	Chief Pierson Director Faber	TBD		