

	<p>City Council Meeting May 17, 2021 - 7:00 PM Virtual AGENDA Watch the meeting LIVE!</p> <p>Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

II. VIRTUAL PARTICIPATION LINK

1. Virtual Participation Link

The Auburn City Council Meeting scheduled for Monday, May 17, 2021 at 7:00 p.m. will be held virtually and telephonically. To attend the meeting virtually please click one of the below links, enter the meeting ID into the Zoom app, or call into the meeting at the phone number listed below.

Per Governor Inslee's Emergency Proclamation 20-05 and 20-28 et. seq. and Stay Safe-Stay Healthy, the City of Auburn is holding public meetings virtually at this time.

City of Auburn Resolution No. 5581, designates City of Auburn meeting locations for all Regular, Special and Study Session Meetings of the City Council and of the Committees, Boards and Commissions of the City as Virtual Locations.

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

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

Please click one of the below URL to join.

Zoom: <https://zoom.us/j/93615923030>

YouTube: <https://www.youtube.com/user/watchauburn/live/?nomobile=1>

Or join by phone:

253 215 8782
877 853 5257 (Toll Free)

Webinar ID: 936 1592 3030

A. Pledge of Allegiance

B. Roll Call

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

IV. AGENDA MODIFICATIONS

V. NEW BUSINESS

VI. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

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

B. Audience Participation

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

1. Virtual Participation

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

Please mail comments to:

City of Auburn

Attn: Shawn Campbell, City Clerk

25 W Main St

Auburn, WA 98001

Please fax comments to:

Attn: Shawn Campbell, City Clerk

Fax number: 253-804-3116

Email comments to:

publiccomment@auburnwa.gov

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

VII. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

2. Grocery Worker Hazard Pay (Chair Brown)

VIII. CONSENT AGENDA

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

A. Minutes of the May 3, 2021 Regular Council Meeting

B. Claims Vouchers (Thomas)

Claim voucher list dated May 17, 2021 which includes voucher numbers 463296 through 463441 in the amount of \$4,308,162.71 and five wire transfers in the amount of \$525,093.37

C. Payroll Vouchers (Thomas)

Payroll check numbers 539141 through 539146 in the amount of \$74,796.86, and electronic deposit transmissions in the amount of \$2,291,494.98, for a grand total of \$2,366,291.81 for the period covering April 29, 2021 to May 11, 2021

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

IX. UNFINISHED BUSINESS

X. ORDINANCES

A. Ordinance No. 6814 (Thomas)

An Ordinance adding new Chapters to Title 3 of the Auburn City Code (Revenue and Finance) to be known as Business and Occupation Tax (Chapter 3.53) and Business and Occupation Tax Administrative Code (Chapter 3.54); providing for a referendum process; and providing a severability clause and an effective date

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6814.)

B. Ordinance No. 6818 (Council)

An Ordinance Protecting the Health, Safety, and Prosperity of Grocery Workers and the General Public during the existing State of Emergency

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6818.)

C. Ordinance No. 6820 (Gaub)

An Ordinance relating to the management of the Auburn Municipal Airport, repealing Chapters 2.18 and Section 12.56.010, and amending sections within Chapters 2.33, 12.02, and 12.56 of the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6820.)

D. Ordinance No. 6821 (Gaub)

An Ordinance relating to the operations of the Auburn Municipal Airport, repealing Chapter 8.36 and various sections of Chapter 12.56, amending various other sections of Chapter 12.56, and adding a new section to the Auburn City Code

(RECOMMENDED ACTION: Move to adopt Ordinance No. 6821.)

XI. RESOLUTIONS

A. Resolution No. 5593 (Comeau)

A Resolution reviewing a schedule of prices for services provided by the Auburn Valley Humane Society to ensure competitive service prices

(RECOMMENDED ACTION: Move to adopt Resolution No. 5593.)

B. Resolution No. 5596 (Comeau)

A Resolution authorizing the Mayor to execute an Ingress, Egress, and Air Rights Easement burdening City owned property for the benefit of Auburn City Center Senior Living Associates, LLC

(RECOMMENDED ACTION: Move to adopt Resolution No. 5596.)

XII. MAYOR AND COUNCILMEMBER REPORTS

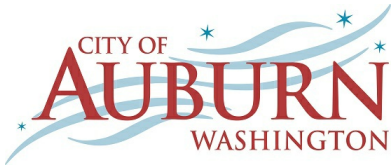
At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. **From the Council**

B. **From the Mayor**

XIII. ADJOURNMENT

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the May 3, 2021 Regular Council Meeting

Department:

City Council

Attachments:

[05-03-2021 Minutes](#)

Date:

May 5, 2021

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

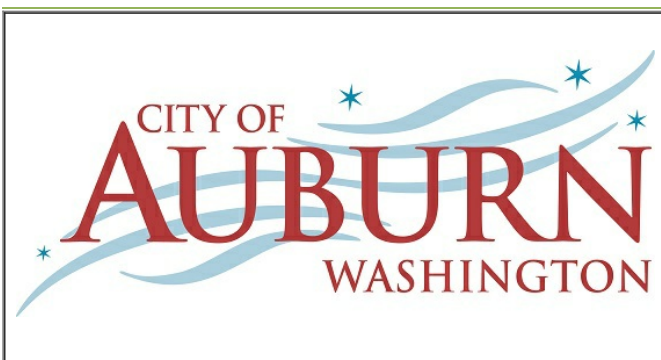
Revised Budget: \$0

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

Meeting Date: May 17, 2021

Staff:

Item Number: CA.A

	<p>City Council Meeting May 3, 2021 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE!</p> <p>Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.</p>
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I. CALL TO ORDER

II. VIRTUAL PARTICIPATION LINK

1. Virtual Participation

The City Council Meeting was held virtually.

A. Pledge of Allegiance

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

B. Roll Call

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

Mayor Nancy Backus, Innovation and Technical Support Specialist Danika Olson, Police Chief Dan O'Neil and City Clerk Shawn Campbell were in Chambers.

The following department directors and staff members attended the meeting virtually: City Attorney Kendra Comeau, Director of Community Development Jeff Tate, Director of Public Works Ingrid Gaub, Director of Finance Jamie Thomas, Director of Administration Dana Hinman, Director of Human Resources and Risk Management Candis Martinson, Director of Innovation and Technology David Travis and Assistant Director of Innovation and Technology Ashley Riggs.

III. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

A. National Police Week & Peace Officers Memorial Day

Mayor Backus read and proclaimed May 9-15, 2021 as National Police Week and May 13, 2021 as National Peace Officers Memorial Day.

B. **Mental Health Awareness Month**

Mayor Backus read and proclaimed May 2021 as Mental Health Awareness Month.

C. **Older Americans Month**

Mayor Backus read and proclaimed May 2021 as Older Americans Month.

IV. **AGENDA MODIFICATIONS**

Proclamations for National Police Week & Peace Officers Memorial Day, Mental Health Awareness Month and Older Americans Month were added to the agenda.

V. **NEW BUSINESS**

There was no new business.

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

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

B. **Audience Participation**

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

Bob Zimmerman

Mr. Zimmerman provided comments about propane safety.

Christina Harris

Ms. Harris provided comments in support of grocery workers hazard pay.

Greg Saar

Mr. Saar provided comments in opposition of grocery workers hazard pay.

Mayor Backus discussed her characterization of Zanita Reed's public comment regarding Ordinance No. 6817 during the April 19, 2021 Council Meeting.

C. **Correspondence**

There was no correspondence for Council to review.

VII. COUNCIL AD HOC COMMITTEE REPORTS

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

1. Finance Ad Hoc Committee (Chair Baggett)

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

2. Grocery Worker Hazard Pay (Chair Brown)

Councilmember Brown, Chair of the Grocery Worker Hazard Pay ad hoc committee, reported he, Deputy Mayor DaCorsi and Councilmember Jeyaraj have not meet since the last report.

VIII. CONSENT AGENDA

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

A. Minutes of the April 19, 2021 Regular City Council Meeting

B. Minutes of the April 26, 2021 Study Session

C. Claim Vouchers (Thomas)

Claim voucher list dated May 3, 2021 which includes voucher numbers 463158 through 463295 in the amount of \$2,603,005.18 and three wire transfers in the amount of \$192,821.49

D. Payroll Vouchers (Thomas)

Payroll check numbers 539137 through 539140 in the amount of \$530,513.44 and electronic deposit transmissions in the amount of \$2,114,763.17, for a grand total of \$2,645,276.61 for the period covering April 14, 2021 to April 28, 2021

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

MOTION CARRIED UNANIMOUSLY. 7-0

IX. UNFINISHED BUSINESS

There was no unfinished business.

X. ORDINANCES

A. Ordinance No. 6818 (Council)

An Ordinance Protecting the Health, Safety, and Prosperity of Grocery Workers and the General Public during the existing State of Emergency

Deputy Mayor DaCorsi moved and Councilmember Brown seconded to table Ordinance No. 6818 to the May 17, 2021 Council Meeting.

Council discussed staff providing a presentation regarding impacts to the community, equity to grocery workers, impact to communities of color, impact to the grocery stores, profitability of grocery stores, a presentation from UFCW-21 and the Grocers at the next study session.

MOTION CARRIED 6-1. Councilmember Stearns voted no.

Councilmember Stearns moved to hear a presentation from the UFCW-21 and the Grocers at the Council Study Session on May 10, 2021.

MOTION CARRIED UNANIMOUSLY. 7-0

XI. RESOLUTIONS

A. Resolution No. 5595 (Gaub)

A Resolution authorizing the adoption of the Facilities Master Plan

Councilmember Brown moved and Councilmember Trout-Manuel seconded to adopt Resolution No. 5595.

MOTION CARRIED UNANIMOUSLY. 7-0

B. Resolution 5589 (Tate)

A Resolution amending the lease agreement between the City of Auburn and Sound Transit for a property located within the Auburn Sound Transit Parking Garage

Councilmember Stearns moved and Councilmember Baggett seconded to adopt Resolution No. 5589.

MOTION CARRIED UNANIMOUSLY. 7-0

XII. MAYOR AND COUNCILMEMBER REPORTS

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

A. From the Council

Deputy Mayor DaCorsi reported he attended the Sound Cities Association Affordable Housing Caucus meeting.

Councilmember Trout-Manuel reported she attended the National League of Cities Hispanic Elected Local Officials (HELO) meeting.

Councilmember Stearns reported he attended the Watershed and Ecosystem Management meeting and the Indigenous Municipal Officials meeting with the National League of Cities. He also thanked the Kiwanis club for their work during Clean Sweep.

Councilmember Jeyaraj reported he and Councilmember Baggett participated in Clean Sweep.

B. From the Mayor

Mayor Backus thanked the participants of Clean Sweep. She reported she met with participants at the Ray of Hope, attended a quarterly meeting with the Muckleshoot Indian Tribe, monthly interfaith roundtable, Puget Sound Regional Council's General Assembly meeting and a retirement party for Brian Petty.

XIII. ADJOURNMENT

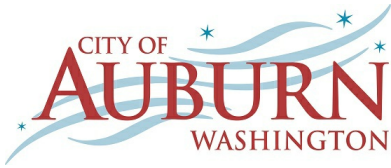
There being no further business to come before the Council, the meeting was adjourned at 7:49 p.m.

APPROVED this 17th day of May, 2021.

NANCY BACKUS, MAYOR

Shawn Campbell, City Clerk

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



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claims Vouchers (Thomas)

Date:

May 5, 2021

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background for Motion:**Background Summary:**

Claim voucher list dated May 17, 2021 which includes voucher numbers 463296 through 463441 in the amount of \$4,308,162.71 and five wire transfers in the amount of \$525,093.37.

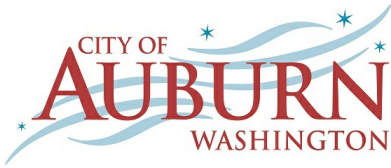
Reviewed by Council Committees:**Councilmember:****Staff:**

Thomas

Meeting Date: May 17, 2021

Item Number:

CA.B



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers (Thomas)

Date:

May 5, 2021

Department:

Finance

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers.

Background for Motion:

Payroll check numbers 539141 through 539146 in the amount of \$74,796.86, and electronic deposit transmissions in the amount of \$2,291,494.98, for a grand total of \$2,366,291.81 for the period covering April 29, 2021 to May 11, 2021.

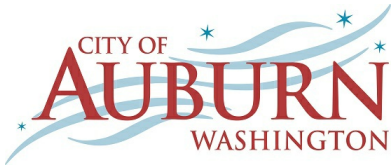
Background Summary:**Reviewed by Council Committees:****Councilmember:****Staff:**

Thomas

Meeting Date: May 17, 2021

Item Number:

CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6814 (Thomas)

Date:

May 12, 2021

Department:

Finance

Attachments:

[Ordinance No. 6814](#)

[Exhibit A](#)

[Exhibit B](#)

Budget Impact:**Administrative Recommendation:**

City Council to adopt Ordinance No. 6814.

Background for Motion:

This ordinance allows for a new Auburn City Code detailing a Business and Occupation Tax and related Administrative Provisions to go into effect beginning January 1, 2022. The purpose of these ordinances is to address the long term General Fund fiscal sustainability issues identified through the City's budgeting and forecasting process.

Background Summary:

In February 2020, BERK Consulting gave the City Council a presentation on the City's General Fund 8 year forecast, and identified some of the fiscal sustainability issues. In March 2020 the Council participated in a Council retreat where they explored the reasons for the sustainability issues BERK presented. They studied, in depth, several different strategies to remain financially proactive. Based on the Council's analysis, several strategies were identified and were built into the City's 2021-2022 Biennial Budget, which was adopted on November 16, 2020.

Since this time Council has reviewed several different B&O models for consideration, and has reviewed the impact analysis of several different strategies on the February 22, 2021, March 22, 2021, and April 12, 2021 study sessions. The final version of the Business and Occupation Tax Code for Council consideration is expected to generate approximately \$5.3 million per year to support general fund operations and services. The code includes the following main tenets:

1. A gross receipts tax applied to businesses that generate gross revenue in excess of \$500,000 per calendar year;
2. A tiered gross receipts tax rate as follows: .05% for retail, .15% for services, .18% for wholesale, and .1% for manufacturing and other businesses;
3. A square foot tax for warehouse space exceeding 4,000 square feet, of \$0.10 per square foot per quarter; and
4. Tax credits available for new businesses and businesses within the Auburn Business Improvement Area

Reviewed by Council Committees:

Councilmember: Baggett

Staff: Thomas

Meeting Date: May 17, 2021

Item Number: ORD.A

CITY OF AUBURN, WASHINGTON

ORDINANCE NO. 6814

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ADDING NEW CHAPTERS TO TITLE 3 OF THE AUBURN CITY CODE (REVENUE AND FINANCE) TO BE KNOWN AS BUSINESS AND OCCUPATION TAX (CHAPTER 3.53) AND BUSINESS AND OCCUPATION TAX ADMINISTRATIVE CODE (CHAPTER 3.54); PROVIDING FOR A REFERENDUM PROCESS; AND PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE

WHEREAS, the City of Auburn, Washington (the “City”) is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington; and

WHEREAS, in 2018, during the creation of the City’s 2019/2020 biannual budget, the City’s long rang forecast identified a structural deficit on the General Fund financial condition resulting from several factors, including the 1% limitation on regular property tax, the sunset of streamlined sales tax mitigation revenue and pressure for increased services that outpace the increase in property and sales tax; and

WHEREAS, the City subsequently engaged with BERK consultants to help the City identify a strategy to overcome the structural deficit; and

WHEREAS, several options were identified as a result of that study, including reviewing service delivery adjustments, updating the City’s cost recovery model, increasing City utility taxes, and imposing a business and occupation tax, in order to preserve the City’s financial sustainability; and

WHEREAS, the need for additional revenue sources and the options identified by the study have been considered by City staff and City Council; and

WHEREAS, Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and RCW 35A.11.020 grant the City the authority to license for revenue and to define taxation categories in order to respond to the unique concerns and responsibilities of the City; and

WHEREAS, these provisions of the law grant the City authority to impose a business and occupation tax on businesses operating within the City; and

WHEREAS, RCW 35.102.040 requires the City utilize the mandatory provisions of the model ordinances developed by Washington cities when imposing a business and occupation tax and adopting administrative provisions related to the imposition and collection of such a tax, but also allows for flexibility to customize the ordinances based on local goals and policies; and

WHEREAS, the model ordinance provides mandatory and standard exemptions for potential inclusion but also gives the City the ability to create certain exemptions from business and occupation tax including an annual gross receipts exemption threshold for small businesses to meet the City's own objectives, exemptions to set economic policy, and exemptions to maintain local control; and

WHEREAS, the model ordinance also provides mandatory and standard deductions for potential inclusion that ensures businesses are not taxed on the same revenue by multiple jurisdictions; and

WHEREAS, the City Council has determined that imposition of a business and occupation tax as provided herein and providing for uniform administration of the City's tax codes will be in the best interest of the public health, safety, and welfare;

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

Section 1. Amendment to Title 3 Revenue and Finance. A new chapter, Chapter 3.53 Business and Occupation Tax, is added to Title 3 as set forth in Exhibit A to this ordinance.

Section 2. Amendment to Title 3 Revenue and Finance. A new chapter, Chapter 3.54 Business and Occupation Tax Administrative Code, is added to Title 3 as set forth in Exhibit B to this ordinance.

Section 3. Referendum. This ordinance is subject to referendum as set forth in RCW 35.21.706. A referendum petition to repeal this ordinance may be filed with the City Clerk within seven (7) days of adoption of this ordinance. Within ten (10) days of such filing, the City Clerk shall confer with the petitioner concerning form and style of the petition, issue the petition and identifications number, and secure an accurate, concise, and positive ballot title from the City Attorney. The petitioner shall then have thirty (30) days in which to secure the signatures of not less than fifteen (15) percent of the City's registered voters as of the last municipal general election upon petition forms which contain the ballot title and the full text of the measures to be referred. The City Clerk shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260(2).

Section 4. Severability; Ratification. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation. All acts taken pursuant to the authority granted in this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 5. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance and the Exhibits attached hereto, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 6. Publication and Effective Date. A summary of this ordinance consisting of the title shall be published in the official newspaper of the City. In the event that no referendum petition is filed, this ordinance shall take effect at 12:01 am on _____, 2021.

PASSED by the City Council of the City of Auburn, Washington, at a regular meeting of the City Council held on _____, 2021.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

CITY OF AUBURN, WASHINGTON

Nancy Backus, Mayor

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

CHAPTER 3.53

BUSINESS AND OCCUPATION TAX

Sections:

- 3.53.010 Exercise of revenue license power.
- 3.53.020 Definitions.
- 3.53.030 Agency – sales and services by agent, consignee, bailee, factor or auctioneer.
- 3.53.040 Imposition of the tax – tax or fee levied; business license fee exemption.
- 3.53.050 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.
- 3.53.060 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.
- 3.53.070 Assignment of gross income derived from intangibles.
- 3.53.080 Allocation and apportionment of income when activities take place in more than one jurisdiction.
- 3.53.090 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.
- 3.53.100 Exemptions.
- 3.53.110 Deductions.
- 3.53.120 Tax credits.
- 3.53.130 Tax part of overhead.
- 3.53.140 Administrative provisions.
- 3.53.150 Severability clause.

3.53.010 Exercise of revenue license power.

The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

3.53.020 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. “Agricultural product,” “farmer”

1. “Agricultural product” means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as

defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such animal. "Agricultural product" does not include animals intended to be pets, marijuana, or marijuana infused products as defined by RCW 69.50.101(y) and (ff).

2. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. "Farmer" does not include any person engaged in the business of growing, producing, processing, selling or distributing marijuana.

B. "Artistic or cultural organization"

1. The term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection 10 of this definition, for viewing or attendance by the general public.

2. The organization must be a not-for-profit corporation under Chapter 24.03 RCW.

3. The organization must be managed by a governing board of not less than eight (8) individuals none of whom is a paid employee of the organization or by a corporation sole under Chapter 24.12 RCW.

4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws.

5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.

6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, Vietnam or disabled veteran status, sexual orientation, or the presence of any mental or physical disability.

10. The term “artistic or cultural exhibitions, presentations, or performances or cultural or art education programs” is limited to:

- a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
- b. A musical or dramatic performance or series of performances; or
- c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

C. “Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

D. “Business and occupation tax” or “gross receipts tax” means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

E. “Commercial or industrial use” means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- 1. Any use as a consumer; and
- 2. The manufacturing of articles, substances or commodities.

F. “Delivery” means the transfer of possession of tangible personal property between the seller and the buyer or the buyer’s representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer’s representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer’s own purposes. It means the buyer or the buyer’s representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the

buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

G. "Director" means the Finance Director of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

H. "Digital automated service," "digital code" and "digital goods" have the same meaning as in RCW 82.04.192.

I. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

J. "Eligible gross receipts tax":

The term "eligible gross receipts tax" means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within section ACC 3.53.040; and
2. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
3. Is not, pursuant to law or custom, separately stated from the sales price; and
4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
5. Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a country, state, province, or any other non-local jurisdiction above the county level.

K. "Engaging in business":

1. The term “engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
2. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection 1. If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.
3. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license:
 - a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.
 - b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.
 - c. Soliciting sales.
 - d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
 - e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
 - f. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
 - g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
 - h. Collecting current or delinquent accounts.
 - i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
 - k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
 - l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
 - m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
 - n. Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
 - p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another person acting on its behalf.
4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax:
- a. Meeting with suppliers of goods and services as a customer.
 - b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

d. Renting tangible or intangible property as a customer when the property is not used in the City.

e. Attending, but not participating in a “trade show” or “multiple vendor events”. Persons participating at a trade show shall review ACC Chapter 2.23 Special Event Permits.

f. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the City.

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection 4.

6. The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

L. “Extracting” is the activity engaged in by an extractor and is reportable under the extracting classification.

M. “Extractor” means every person who from the person’s own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. “Extractor” does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

N. “Extractor for hire” means a person who performs under contract necessary labor or mechanical services for an extractor.

O. “Gross income of the business” means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

P. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Q. "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

R. "Manufacturer," "to manufacture":

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.

2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- a. The production of special made or custom made articles;
- b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other

than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

S. "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co- partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

T. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

U. "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort. "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

V. "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

W. "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

2. Abstract, title insurance, and escrow services;

3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding (a) horticultural services provided to farmers and (b) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and
7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.
8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

X. "Sale," "casual or isolated sale":

1. "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.
2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

Y. "Sale at retail", "retail sale":

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470, and who:
 - a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in a through e of this subsection following such use.

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection 7 of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under ACC 3.53.040.A.7.

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of tenants thereof, and also excluding sales of laundry service to non-profit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

- b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;
- c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
- d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
- e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under Chapter 82.16 RCW;
- f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one (1) month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one (1) month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;
- g. The installing, repairing, altering, or improving of digital goods for consumers;
- h. The sale of or charge made for tangible personal property, labor and services to persons taxable under a through g of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the

performance of any activity defined as a “sale at retail” or “retail sale” even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection 1 of this section and nothing contained in subsection 1 of this section shall be construed to modify this subsection.

4. “Sale at retail” or “retail sale” shall also include the providing of competitive telephone service to consumers.

5. “Sale at retail” or “retail sale”:

a. “Sale at retail” or “retail sale” shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection 5.a the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser. The term “sale at retail” or “retail sale” does not include the sale of or charge made for:

i. Custom software; or

ii. The customization of prewritten software.

b. The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

i. The service described in this subsection 5.b includes the right to access and use prewritten software to perform data processing.

ii. For purposes of subsection 5.b.i “data processing” means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state,

the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind (Public road construction).

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

8. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to Chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This should be reported under the service and other classification as defined under ACC 3.53.040.A.7.)

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This should be reported under the service and other classification as defined under ACC 3.53.040.A.7.)

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;

c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection Y.11 includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, “permanent” means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. “Sale at retail” or “retail sale” shall also include the installing, repairing, altering, or improving of digital goods for consumers.

Z. “Sale at wholesale” or “wholesale sale” means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection Y.5.b, which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

AA. “Service” means any sale or charge made for personal, business or professional service, including amounts designated as rents, fees, or admissions, not otherwise included within any other tax classification defined herein; provided that, the term “service” excludes retail or wholesale services.

BB. “Software”, “prewritten software”, “custom software”, “customization of canned software”, “master copies”, “retained rights”:

1. “Prewritten software” or “canned software” means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such

purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

2. "Custom software" means software created for a single person.

3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

6. "Software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information, used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients, regardless of the media upon which that documentation is provided, that describe the code and its use, operation, and maintenance and that typically are delivered with the code to the consumer. All software is classified as either canned or custom.

CC. "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

DD. "Tuition fee" includes library, laboratory, health service, and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are

made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as hereafter amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with Chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States Secretary of Education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

EE. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

FF. "Value of products":

1. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.
2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.
3. Notwithstanding subsection 2 above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall

correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

GG. “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

3.53.030 Agency – sales and services by agent, consignee, bailee, factor or auctioneer.

A. *Sales in Own Name – Sales or Purchases as Agent.* Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person’s own name and actually so selling, shall be deemed the seller of such tangible personal property within the meaning of this chapter.

The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
2. The books and records show the amount of the principal’s gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal’s gross sales must not be reflected as the agent’s income on any of the agent’s books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.
3. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.
4. Bulk goods sold or purchased on behalf of a principal must not be commingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been commingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.

C. *Services in Own Name – Procuring Services as Agent.* For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.
2. The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

3.53.040 Imposition of the tax – tax or fee levied.

Except as provided in subsection C of this section, effective January 1, 2022 at 12:01 a.m. there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City of Auburn, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

A. Gross receipts tax

1. Upon every person engaging within the City in business as an extractor; as to such persons, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the City for sale or for commercial or industrial use, multiplied by the rate of .100 of one percent (.001). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.
2. Upon every person engaging within the City in business as a manufacturer; as to such persons, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City, multiplied by the rate of .100 of

one percent (.001). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

3. Upon every person engaging within the City in the business of making sales at wholesale; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of .180 of one percent (.0018).

4. Upon every person engaging within the City in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of .050 of one percent (.00050).

5. Upon every person engaging within the City in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of .100 of one percent (.001).

6. Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of .150 of one percent (.0015).

7. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of .100 of one percent (.001). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

B. Square footage tax

1. Upon every person who leases, owns, occupies, or otherwise maintains a warehouse or outdoor warehouse within the city for purposes of engaging in business activities in the city there shall be a tax measured by the number of square feet of business warehouse floor space or outdoor warehouse space. The amount of the tax shall be equal to \$0.10 for each quarterly period of a calendar year for each square foot of warehouse or outdoor warehouse floor space that is leased, owned, occupied, or otherwise maintained within the city during the reporting period, calculated to the nearest square foot.

2. For purposes of this section, “warehouse” means a building or structure, or any part thereof, in which goods, wares, merchandise, or commodities are received or stored, whether or not for compensation, in furtherance of engaging in business.

3. For purposes of this section, “outdoor warehouse” means an area that is outdoors and is primarily used for the transloading of goods, wares, merchandise, or commodities on property for purposes of switching modes or vehicles of conveyance for the primary purpose of wholesaling, distributing, or reorganizing goods, wares, merchandise, or commodities en route to final destinations of sale or other transaction. Transloading generally involves the transfer of goods from one mode of transportation to another en route to an ultimate destination and, for purposes of the square footage tax, includes areas used for crossdocking, waylaying, temporary embarkment, and other similar activities.

4. For purposes of this section, the square footage of a business warehouse shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Square footage shall not include stairs, elevator shafts, flues, pipe shafts, vertical ducts, heating or ventilation shafts, janitor closets, and electrical or utility closets.

5. For purposes of this section, the square footage of an outdoor warehouse shall only include those areas used for the receipt or storage of goods, wares, merchandise, or commodities that are being received and temporarily stored for transloading, whether or not for compensation, in furtherance of engaging in business. Such areas will typically include those areas where goods, wares, merchandise, and commodities, in transit to their ultimate destination, are parked, packaged, or stored after transloading, waylaying, or crossdocking. Square footage shall not include areas used only for employee, customer, or visitor parking, dock high loading areas used primarily for a business warehouse, buildings, areas used only for direct sales or rentals to consumers, landscaped areas, stormwater facilities, maneuvering areas and drive aisles, areas used only for garbage or recycling pickup, rights-of-way, or other areas clearly not used for the temporary storage of goods, wares, merchandise, and commodities in transit. Outdoor areas used for storage of agricultural products or for ancillary storage of materials utilized in, or products resulting from, onsite manufacturing operations are not considered outdoor warehouses.

6. Persons with more than one business warehouse or outdoor warehouse within the city must include all business warehouse floor space and outdoor warehouse space for all locations within the city. When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse or outdoor warehouse where no walls or other barriers separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, shall

be included in the business warehouse floor space of the person that operates the business warehouse, and not by the person renting the warehouse space.

7. If the square footage tax imposed in this subsection (B) is less than or equal to the gross receipts tax imposed in subsection (A) of this section, no square footage tax will be due; if the square footage tax imposed in this subsection (B) exceeds the gross receipts tax imposed in subsection (A) of this section, the taxpayer shall also remit the excess over the gross receipts tax payable under subsection (A) of this section.

C. Gross receipt and square footage tax thresholds

1. *Gross Receipts Threshold.* The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$500,000 or is equal to or less than \$125,000 during any quarter if on a quarterly reporting basis.

2. *Square Footage Threshold.* The square footage tax imposed in subsection (B) of this section shall not apply to any person unless that person's total area of business space within the city exceeds one of the following thresholds:

- a. Four thousand taxable square feet of business warehouse space; or
- b. Two hundred sixty-one thousand three hundred sixty taxable square feet (six acres) of outdoor warehouse space;

If the square footage tax applies, it applies to all business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

3.53.050 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

A. Persons who engage in business activities that are within the purview of two (2) or more subsections of ACC 3.53.040.A shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

C. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

D. *Credit for Persons That Sell in the City Products That They Extract or Manufacture.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (1) with respect to the manufacturing of the products sold in the City, and (2) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

E. *Credit for Persons That Manufacture Products in the City Using Ingredients They Extract.* Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

F. *Credit for Persons That Sell Within the City Products That They Print, or Publish and Print.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

3.53.060 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. *Amounts Subject to an Eligible Gross Receipts Tax in Another City That Also Maintains Nexus Over the Same Activity.* For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one (1) jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.
2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one (1) jurisdiction on the gross income derived from intangibles such as royalties,

trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

B. *Person Manufacturing Products Within and Without.* A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

3.53.070 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

3.53.080 Allocation and apportionment of income when activities take place in more than one jurisdiction.

Gross income, other than persons subject to the provisions of Chapter 82.14A RCW, shall be allocated and apportioned as follows:

A. Gross income derived from all activities other than those taxed as service or royalties under ACC 3.53.040.A.7 shall be allocated to the location where the activity takes place.

B. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

C. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

1. The seller's place of business if the purchaser receives the digital product at the seller's place of business;

2. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

3. If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

4. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

5. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050(2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

D. If none of the methods in ACC 3.53.080.C for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections ACC 3.53.080.C.1 through 5, then the City and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the City to use an alternative method under this subsection ACC 3.53.080.D. The City may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections ACC 3.53.080.C.1 through 5 are not available and the taxpayer and the City are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

E. For purposes of subsections ACC 3.53.080.C.1 through 5, the following definitions apply:

1. "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192;

2. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(c); and

3. "Receive" has the same meaning as in RCW 82.32.730.

F. Effective January 1, 2020, gross income derived from activities taxed as services and other activities taxed under ACC 3.53.040.A.7 shall be apportioned to the City by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two (2).

1. The payroll factor is a fraction, the numerator of which is the total amount paid in the City during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the City if:

- a. The individual is primarily assigned within the City;
- b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the City; or
- c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city and the employee resides in the City.

2. The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the City during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the City if the customer location is in the City.

3. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the City, and the gross income is attributable under subsection 2 of this subsection F to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection F.3, "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

4. If the allocation and apportionment provisions of this subsection F do not fairly represent the extent of the taxpayer's business activity in the City, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- a. Separate accounting;
- b. The exclusion of any one (1) or more of the factors;
- c. The inclusion of one (1) or more additional factors that will fairly represent the taxpayer's business activity in the City; or

d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

5. The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection 4 of this subsection F must prove by a preponderance of the evidence:

a. That the allocation and apportionment provisions of this subsection F do not fairly represent the extent of the taxpayer's business activity in the City; and

b. That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

6. If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection F.

7. A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

G. The definitions in this subsection apply throughout this section:

1. "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the City if the income would be taxable under the service classification if received from activities within the City, less any exemptions or deductions available.

2. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal Internal Revenue Code.
4. "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.
5. "Customer location" means the following:
 - a. For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.
 - b. For a customer not engaged in business, if the service does not require the customer to be physically present:
 - i. The customer's residence; or
 - ii. If the customer's residence is not known, the customer's billing/mailling address.
 - c. For a customer engaged in business:
 - i. Where the services are ordered from;
 - ii. At the customer's billing/mailling address if the location from which the services are ordered is not known; or
 - iii. At the customer's commercial domicile if none of the above are known.
6. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
7. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.
8. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.
9. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct

the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

H. Assignment or apportionment of revenue under this section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

3.53.090 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.

Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the Department of Revenue.

3.53.100 Exemptions.

A. *Adult Family Homes*. This chapter does not apply to adult family homes which are licensed as such, or which are specifically exempt from licensing, under rules of the Washington State Department of Social and Health Services.

B. *Day Care Provided By Churches*. This chapter shall not apply to amounts derived by a church that is exempt from property tax under RCW 84.36.020 from the provision of care for children for periods of less than twenty-four (24) hours.

C. *Child Care Resource and Referral Services by Non-profit Organizations*. This chapter does not apply to non-profit organizations in respect to amounts derived from the provision of child-care resource and referral services.

D. *Non-Profit Organizations That are Guarantee Agencies, Issue Debt, or Provide Guarantees for Student Loans*. This chapter does not apply to gross income received by non-profit organizations exempt from federal income tax under Internal Revenue Code Section 501(c)(3), as hereafter amended, that:

1. Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or
2. Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

E. *Non-profit Organizations—Credit and Debt Services.* This chapter does not apply to non-profit organizations in respect to amounts derived from provision of the following services:

1. Presenting individual and community credit education programs including credit and debt counseling;
2. Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;
3. Establishing and administering negotiated repayment programs for debtors; or
4. Providing advice or assistance to a debtor with regard to subsections 1, 2, or 3, above, of this subsection E.

F. *Certain fraternal and beneficiary organizations.* This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

G. *Certain Corporations Furnishing Aid and Relief.* This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the Congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

H. *Operation of Sheltered Workshops.* This chapter shall not apply to income received from the Department of Social and Health Services for the cost of care, maintenance, support and training of persons with developmental disabilities at non-profit group training homes as defined by Chapter 71A.22 RCW or to the business activities of non-profit organizations from the operation of sheltered workshops. For the purposes of this subsection, “the operation of sheltered workshops” means performance of business activities of any kind on or off the premises of such non-profit organizations which are performed for the primary purpose of:

1. Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or
2. Providing evaluation and work adjustment services for handicapped individuals.

I. *Investments – Dividends From Subsidiary Corporations.* This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

J. The City of Auburn is exempt from the tax levied by this chapter.

K. *Gross Receipts Taxed Under Other Auburn City Code (ACC) Section.* This chapter shall not apply to:

1. Any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of ACC Chapter 3-88 (Utility Tax); or
2. Any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of ACC Chapter 3-80 (Gambling Tax).

L. *Credit Unions.* This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.

M. *International Banking Facilities.* This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an “international banking facility” means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(A) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604a, that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

N. *Insurance Business.* This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

O. *Farmers – agriculture*. This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any other agricultural product that is raised, caught, produced or manufactured by such persons.

P. *Athletic Exhibitions*. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Boxing Commission.

Q. *Racing*. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.

R. *Ride Sharing*. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.

S. *Employees*. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended. A booth renter is an independent contractor for purposes of this chapter.

T. *Amounts Derived from Sale of Real Estate*. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

U. *Mortgage Brokers' Third-Party Provider Services Trust Accounts*. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

V. *Amounts Derived From Manufacturing, Selling or Distributing Motor Vehicle Fuel*. This chapter shall not apply to the manufacturing, selling or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.38.020 and exempt under RCW 82.38.280, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

W. *Amounts Derived From Liquor, and the Sale or Distribution of Liquor*. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

X. *Casual and Isolated Sales*. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

Y. *Accommodation Sales*. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where:

1. The amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article; and
2. The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

Z. *Real Estate Brokers and Associated Brokers, Agents, or Salesmen*. This chapter does not apply to that portion of a real estate commission assigned to another brokerage office pursuant to the division of revenue between the originating brokerage office and a cooperating brokerage office on a particular transaction. Each brokerage office shall pay the tax upon its respective revenue share of the transaction. Furthermore, where a brokerage office has paid the business and occupation tax on the gross commission earned by that brokerage office, associate brokers, salesmen or agents within the same office shall not be required to pay the tax upon their share of the commission from the same transaction.

AA. *Taxes Collected as Trust Funds*. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

BB. *Health Maintenance Organization, Health Care Service Contractor, Certified Health Plan*. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan with respect to premiums or prepayments that are taxable under RCW [48.14.0201](#). However, per RCW [48.14.0201\(7\)](#), this exemption is not intended to, and shall not, impair the City's ability to impose a tax hereunder upon the health care services directly delivered by the employees of a health maintenance organization under Chapter [48.46](#) RCW.

CC. *Nonprofit health care organization fees*. This chapter shall not apply to amounts derived from medical, nursing, ambulance, hospital, and other appropriate outpatient care as charges and service fees by nonprofit health care organizations for the benefit of subscribers where none of such fees and charges inure to the benefit of the organization or any of its employees, provided further that if a nonprofit health care organization's annual gross income, minus any allowed deductions or exemptions as provided in this chapter, exceeds \$30,000,000.00 for any calendar year, the exemption in this subsection A shall not apply to the amounts derived from health care organization service fees and charges. Non-profit health

care organizations exceeding the \$30,000.000 gross income threshold may take deductions in ACC 3.53.110S.

3.53.110 Deductions.

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

A. *Membership Fees and Certain Service Fees By Non-Profit Youth Organization.* For purposes of this subsection, “non-profit youth organization” means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization’s facilities; or
2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization’s camping and recreational facilities.

B. *Fees, Dues, and Charges Received by Non-Profit Organizations or Non-Profit Corporations.* In computing tax, a non- profit organization may deduct from the measure of tax amounts derived from bona fide:

1. Initiation fees;
2. Dues;
3. Contributions;
4. Donations;
5. Tuition fees;
6. Charges made for operation of privately operated kindergartens;
7. Charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public; and

8. Endowment funds.

C. *Artistic and Cultural Organizations – Income From Business Activities*. In computing tax, there may be deducted from the measure of tax those amounts received by artistic or cultural organizations, as defined in this chapter, which represent:

1. Income derived from business activities conducted by the organization, provided that this deduction does not apply to retail sales made by artistic and cultural organizations;
2. Amounts received from the United States or any of instrumentality thereof or from the State of Washington or any municipal corporation or subdivision thereof as compensation for; or to support, artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public; or
3. Amounts received as tuition charges collected for the privilege of attending artistic or cultural education programs.

D. *Artistic or Cultural Organization – Deduction For Tax Under the Manufacturing Classification – Value of Articles For Use In Displaying Art Objects or Presenting Artistic or Cultural Exhibitions, Performances, or Programs*. In computing tax, there may be deducted from the measure of tax by persons subject to payment of the tax under the manufacturing classification, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization, as defined in this chapter, solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

E. *Day Care Activities*. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Internal Revenue Code Section 501(c)(3), as hereafter amended, provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

F. *Compensation from public entities for health or social welfare services – exception*. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, “employee benefit plan” includes the military benefits program authorized in 10 U.S.C. 1071 et seq., as amended, or amounts payable pursuant thereto.

G. *Interest on Investments or Loans Secured By Mortgages or Deeds of Trust.* In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

H. *Interest on Obligations of the State, its Political Subdivisions, and Municipal Corporations.* In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

I. *Interest on Loans to Farmers and Ranchers, Producers or Harvesters of Aquatic Products, or Their Cooperatives.* In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

J. *Receipts From Tangible Personal Property Delivered Outside the State.* In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

K. *Cash Discount Taken by Purchaser.* In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

L. *Credit Losses of Accrual Basis Taxpayers.* In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

M. *Repair, Maintenance, Replacement, etc., of Residential Structures and Commonly Held Property – Eligible Organizations.*

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures

and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

- a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;
- b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or
- c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

- a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;
- b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;
- c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. *Radio and Television Broadcasting – Advertising Agency Fees – National, Regional, and Network Advertising – Interstate Allocations.* In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

1. Advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;
2. Actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and

3. Local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

O. *Constitutional Prohibitions.* In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

P. *Receipts from the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.* Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

Q. *Professional Employer Services.* In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

R. *Amounts Derived from the Sale or Lease of Clean Alternative Fuel and Plug-in Hybrid Vehicle Sales.* The deduction applies as follows:

1. This chapter shall not include the proceeds collected on the sale or lease of new or used passenger cars, light duty trucks, or medium duty passenger vehicles that are either exclusively powered by clean alternative fuel; or is a plug-in hybrid vehicle that can travel at least 30 miles on battery power alone.
2. Up to \$45,000 per new vehicle or up to \$30,000 per used vehicles may be deducted from taxable revenue.
3. The sale of accessories purchased as part of the qualifying vehicle may be included in the deduction, provided the total deduction does not exceed the total amounts listed in ACC 3.53.110.R.2.
4. Extended warranties and maintenance agreements cannot be included in the amount to be deducted.
5. This deduction is eligible beginning January 1, 2022 and will expire December 31, 2025.

S. *Nonprofit health care organization fees.* In computing the tax, nonprofit health care organizations may deduct up to \$30,000,000 in revenue derived from medical, nursing, ambulance, hospital, and other appropriate outpatient care as charges and service fees by the nonprofit health care organization.

3.53.120 Tax credits.

A. New business tax credit

1. Purpose: The City believes that providing a temporary tax credit relating to new businesses is a meaningful method of fostering such new businesses to establish a solid financial foundation during its start-up process. Further, the City finds that a credit related to the creation of new full-time equivalent ("FTE") employees within the City will benefit other local businesses. Therefore, considering situations particular and unique to the City, the City finds that it is appropriate to differ from the business and occupation tax model ordinance in providing for a new business tax credit as described in this section.

2. There may be credited against the tax imposed by ACC 3.53.040, the amount up to one thousand dollars (\$1,000) per FTE position in the City of Auburn per quarter. To take the credit authorized by this section, a taxpayer must be able to document all of the following:

a. The taxpayer has not, for any period of time, engaged in business in the City of Auburn within the five (5) years preceding application of the tax credit;

b. The taxpayer employs twenty (20) or more full-time equivalent positions in Auburn. An FTE position is defined as each one thousand nine hundred and twenty (1,920) worker hours per calendar year; and

c. The taxpayer may be required to submit its payroll information and/or other documentation in support of such employee hours worked in the City.

d. The taxpayer must report, on each return filed, the taxpayer's total number of full-time employment positions created and positions currently filled.

e. The taxpayer must employ a minimum of twenty (20) FTE's in each quarter the credit is being applied.

3. The tax credit can be taken for the first twelve (12) consecutive reporting quarters or three (3) reporting years.

4. This credit is not considered a payment of taxes for purposes of seeking a refund of overpayment of tax pursuant to the provisions contained in ACC Chapter 3.54, or any other

purpose. As such, unused credit amounts will not be refunded, carried over from reporting period(s) to reporting period(s), and will not accrue interest.

5. The Director is authorized to promulgate rules implementing, interpreting, and enforcing the provisions of this section.

B. Auburn business area improvement assessment credit

1. Purpose: Certain businesses operating within the Business Area Improvement (BIA) boundaries, as identified in ACC Chapter 2.98, are subject to an annual assessment. The purpose of the assessment is to enhance trade, economic vitality, and livability within the City of Auburn. The City believes that providing business and occupation tax relief to local businesses that are subject to the BIA assessment helps ensure their continued downtown presence, which contributes towards a vibrant downtown core and further benefits other local businesses not subject to the BIA assessment.

2. There may be credited against the tax imposed by ACC 3.53.040, an amount equal to the BIA assessment fee paid as imposed by ACC Chapter 2.98.

3. This credit is not considered a payment of taxes for purposes of seeking a refund of overpayment of tax pursuant to the provisions contained in ACC Chapter 3.54, or any other purpose. As such, unused credit amounts will not be refunded, carried over from reporting period(s) to reporting period(s), and will not accrue interest.

4. The Director is authorized to promulgate rules implementing, interpreting, and enforcing the provisions of this section.

3.53.130 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

3.53.140 Administrative provisions.

The administrative provisions contained in ACC Chapter 3.54 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

3.53.150 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

Exhibit B

CHAPTER 3.54
BUSINESS AND OCCUPATION TAX
ADMINISTRATIVE CODE

Sections:

3.54.010	Purpose.
3.54.020	Application of chapter stated.
3.54.030	Definitions.
3.54.040	Definitions – References to Chapter 82.32 RCW
3.54.050	Registration/license requirements.
3.54.060	When due and payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.
3.54.070	Payment methods – Mailing returns or remittances – Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.
3.54.080	Records to be preserved – Examination – Estoppel to question assessment.
3.54.090	Accounting methods.
3.54.100	Public work contracts – Payment of fee and tax before final payment for work.
3.54.110	Underpayment of tax, interest, or penalty – Interest.
3.54.120	Time in which assessment may be made.
3.54.130	Over payment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.
3.54.140	Late payment – Disregard of written instructions – Evasion – Penalties.
3.54.150	Cancellation of penalties.
3.54.160	Taxpayer quitting business – Liability of successor.
3.54.170	Administrative appeal.
3.54.180	Judicial review of hearing examiner decision.
3.54.190	Director to make rules.
3.54.200	Ancillary allocation authority of Director.
3.54.210	Mailing of notices.
3.54.220	Tax declared additional.
3.54.230	Public disclosure – Confidentiality – Information sharing.
3.54.240	Tax constitutes debt.
3.54.250	Unlawful actions – Violation – Penalties.
3.54.260	Suspension or revocation of business license and/or registration.
3.54.270	Closing agreement provisions.
3.54.280	Charge-off of uncollectible taxes.
3.54.290	Severability.

3.54.010 Purpose.

This chapter implements Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and 35A.11.020 (code cities); RCW 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); and RCW 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. It is intended that this chapter be as uniform as possible among the various municipalities and

consistent with the mandatory requirements of Chapter 35.102 RCW for municipalities. Uniformity with provisions of state tax laws should not be presumed, and references in this chapter to statutory or administrative rule changes do not mean state tax statutes or rules promulgated by the Finance Department of Revenue automatically apply. This chapter is to provide administrative specific guidelines and provisions to implement, administer, and enforce the city tax codes.

3.54.020 Application of chapter stated.

The provisions of this chapter shall apply with respect to the taxes imposed under chapter 3.53 and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

3.54.030 Definitions.

For purposes of this chapter:

The definitions contained in chapter 3.53 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

A. "Reporting period" means:

1. A one-month period beginning the first day of each calendar month (monthly); or
2. A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
3. A twelve-month period beginning the first day of January of each year (annual).

B. "Return" means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

C. "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

D. "Tax year" or "taxable year" means the calendar year.

3.54.040 Definitions – References to Chapter 82.32 RCW

Where provisions of Chapter 82.32 RCW are incorporated in 3.54.110 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in ACC 3.53.020 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

3.54.050 Registration/license requirements.

No person shall engage in any business or conduct any business activity without first obtaining a valid current business registration as required by ACC 5.10, General Business License.

3.54.060 When due and payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.

- A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time as provided in RCW [82.32.045](#)(1), (2), and (3).
- B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.
- C. Tax returns must be filed and returned by the due date whether or not any tax is owed.
- D. For purposes of the tax imposed by chapter 3.53, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than \$500,000 in the current calendar year and/or whose combined taxable business warehouse square footage within the city is 4,000 square feet or less, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.
- E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.
- F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.
- G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**3.54.070 Payment methods – Mailing returns or remittances – Time extension – Deposits –
Recording payments – Payment must accompany return – NSF checks.**

- A. Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

- B. A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.
- C. If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.
- D. The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.
- E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.
- F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars (\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (\$20.00) NSF fee) is received.
- G. The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

3.54.080 Records to be preserved – Examination – Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

A. If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (1) produces within the City such books and records as may be required by the Director, or (2) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

B. Any person who fails, or refuses a Finance Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax on Page 62 of 123

payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

3.54.090 Accounting methods.

A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

B. The taxes imposed and the returns required shall be upon a calendar year basis.

3.54.100 Public work contracts – Payment of fee and tax before final payment for work.

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

3.54.110 Underpayment of tax, interest, or penalty – Interest.

If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

3.54.120 Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

- A. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;
- B. Against a person that has committed fraud or who misrepresented a material fact; or
- C. Against a person that has executed a written waiver of such limitations.

3.54.130 Over payment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection C of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

3.54.140 Late payment – Disregard of written instructions – Evasion – Penalties.

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW [82.32.090\(1\)](#), as it now exists or as it may be amended.

B. If the Director determines that any tax has been substantially underpaid as defined in RCW [82.32.090\(2\)](#), there shall be added a penalty in accordance with RCW [82.32.090\(2\)](#), as it now exists or as it may be amended.

C. If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW [82.32.090\(3\)](#), as it now exists or as it may be amended.

D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by ACC 5.10, the Director shall impose a penalty in accordance with RCW [82.32.090\(4\)](#), as it now exists or as it may be amended. No penalty shall be imposed under this subsection D if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW [82.32.090\(5\)](#), as it now exists or as it may be amended.

F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW [82.32.090\(6\)](#), as it now exists or as it may be amended.

G. The penalties imposed under subsections A through E above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, "return" means any document a person is required by the City of Auburn to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.

J. If incorporation into the City of Auburn code of future changes to RCW [82.32.090](#) is deemed invalid, then the provisions of RCW [82.32.090](#) existing at the time this ordinance is effective shall apply.

3.54.150 Cancellation of penalties.

A. The Director may cancel any penalties imposed under subsection 3.54.140.A if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C.

B. A request for cancellation of penalties must be received by the Director within 30 days after the date the Finance Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

C. The Director may cancel the penalties in subsection 3.54.140.A one time if a person:

1. Is not currently licensed and filing returns,
2. Was unaware of its responsibility to file and pay tax, and
3. Obtained business licenses and filed past due tax returns within 30 days after being notified by the Finance Department.

D. The Director shall not cancel any interest charged upon amounts due.

3.54.160 Taxpayer quitting business – Liability of successor.

A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the City from the taxpayer until such time as: 1) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or 2) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Finance Department does not within six (6) months of the date it received the notice issue an assessment

against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

3.54.170 Administrative appeal.

A. Any person, except one who has failed to comply with section 3.54.080, having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the Finance Department may, within thirty (30) days after the issuance of such notice or within the period covered by any extension of the due date granted by the Finance Department, request a correction of the amount of the assessment and a conference for review of the assessment. Interest and penalties assessed shall continue to accrue during the Finance Department's review of a request for a correction, except and to the extent that the Finance Department later determines that a tax assessment was too high or the delay in issuing a determination is due to unreasonable delays caused by the Finance Department. After the conference, the Finance Department will make a final determination regarding the assessment and shall notify the taxpayer of the Finance Department's determination within sixty (60) days, unless otherwise notified in writing by the Finance Department. Such determination shall be subject to appeal pursuant to subsection B of this section. If no request for correction is filed within the time period provided herein, the assessment covered by such notice shall become final and immediately due and payable.

B. Any person aggrieved by the amount of any fee, tax, interest or penalty determined by the Director to be due under the prohibitions of this chapter ACC 3.53 Business and Occupation Tax may, upon full payment of the amount assessed, appeal such determination pursuant to the following procedures:

C. *Filing Fee.* A filing fee, as determined by ACC 2.46, shall be submitted with the appeal, which filing fee is required to process the appeal.

D. *Form of Appeal.* Any appeal must be in writing and must contain the following:

1. The taxpayer's name, business address, and phone number;
2. A statement identifying the determination of the Finance Department from which the appeal is taken;
3. A receipt or other proof of payment of the assessment in the amount determined by the Finance Department;
4. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Finance Department is alleged to have made in making the determination;
5. A statement identifying the requested relief from the determination being appealed; and
6. A receipt from the Finance Department, as proof of payment "under protest", for the amount of the fee, tax, interest and penalty determined to be owing by the Finance Department. Such payment shall be a condition precedent to the right to appeal to the hearing examiner.

E. *Time and Place to Appeal.* Any appeal shall be filed with the office of the City Clerk with a copy to the Director no later than twenty (20) days following the date on which the determination of the Finance Department was mailed to the taxpayer. Failure to follow the appeal procedures in this section, including paying the filing fee and payment "under protest", shall preclude the taxpayer's right to appeal. Page 66 of 123

F. *Appeal Hearing.* The hearing examiner shall schedule a hearing date, notify the taxpayer and the Director of such hearing date and shall then conduct an appeal hearing in accordance with this chapter and procedures developed by the hearing examiner, at which time the appellant taxpayer and the Director shall have the opportunity to be heard and to introduce evidence relevant to the subject of the appeal.

G. *Burden of Proof.* The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Finance Department is erroneous.

H. *Hearing Record.* The hearing examiner shall preserve a record of the hearing in such a form and manner as he/she deems proper.

I. *Decision of the Hearing Examiner.* Following the hearing, the hearing examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions and decision shall be mailed to the appellant taxpayer and to the Director. The decision shall state the correct amount of the fee, tax, interest or penalty owing.

J. *Interest accrual or payment.* Interest and/or penalties shall continue to accrue on all unpaid amounts, in accordance with ACC 3.54.110 and ACC 3.54.140, notwithstanding the fact that an appeal has been filed. If the hearing examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with ACC 3.54.130.

3.54.180 Judicial review of hearing examiner decision.

The taxpayer or the City may obtain judicial review of the hearing examiner's administrative decision by applying for a Writ of Review in the King County Superior Court within 21 days from the date of the hearing examiner's decision in accordance with the procedure set forth in Chapter [7.16](#) RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

3.54.190 Director to make rules.

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

3.54.200 Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Auburn, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

B. To allocate or apportion, in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities, the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city;

C. To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided,

that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

3.54.210 Mailing of notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

3.54.220 Tax declared additional.

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of Auburn except as herein otherwise expressly provided.

3.54.230 Public disclosure – Confidentiality – Information sharing.

A. For purposes of this section, defined terms shall be as set forth in ACC 3.54.030:

1. "Disclose" means to make known to any person in any manner whatever a return or tax information.
2. "Tax information" means:
 - a. A taxpayer's identity;
 - b. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;
 - c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
 - d. Other data received by, recorded by, prepared by, or provided to the City with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under the City's tax code for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.
3. "City agency" means every City office, department, division, bureau, board, commission, or other City agency.
4. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

C. This section does not prohibit the Director from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:
 - a. In respect of any tax imposed under the City's tax code if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
 - b. In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.
2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to ACC 3.54.190 such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the Finance Department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;
3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;
4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;
5. Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;
6. Disclosing any such return or tax information to a peace officer as defined in RCW [9A.04.110](#) or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;
7. Disclosing any such return or tax information to the proper officer of the Internal Revenue Service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

8. Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

9. Publishing or otherwise disclosing the text of a written determination designated by the Director as a precedent pursuant to RCW [82.32.410](#);

10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

11. Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter [42.56](#) RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

12. Disclosing such return or tax information to the United States Department of Agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

14. Disclosing to a person against whom the Finance Department has asserted liability as a successor under ACC 3.54.160 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

15. Disclosing real estate excise tax affidavit forms filed under ACC 3.56 in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

16. Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

D. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection D.

1. The disclosure must be in connection with the Finance Department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information.

disclosed. The Finance Department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the Finance Department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

2. Before disclosure of any tax return or tax information under this subsection D, the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection D until the time period allowed in 3 of this subsection has expired or until the court has ruled on any challenge brought under 3 of this subsection.

3. The person in possession of the data, materials, or documents to be disclosed by the Finance Department has twenty days from the receipt of the written request required under 2 of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the Finance Department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

5. Requesting information under 2 of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

E. Service of a subpoena issued by the court or under ACC 2.46 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under ACC 2.46 may disclose the existence or content of the subpoena to that person's legal counsel.

F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection C.4, 5, 6, 7, 8, 9, or 11 of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two years thereafter.

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Auburn and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

3.54.250 Unlawful actions – Violation – Penalties.

A. It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director;
2. To make any false statement on any license application or tax return;
3. To aid or abet any person in any attempt to evade payment of a license fee or tax;
4. To fail to appear or testify in response to a subpoena issued pursuant to the rules of procedure of the office of the hearing examiner;
5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

3.54.260 Suspension or revocation of business license and/or registration.

See ACC Chapter 5.15.

3.54.270 Closing agreement provisions.

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer; and

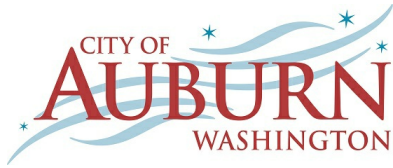
B. In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

3.54.280 Charge-off of uncollectible taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer.

3.54.290 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6818 (Council)

Date:

May 11, 2021

Department:

Council

Attachments:

[Ord 6818](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:**Background for Motion:****Background Summary:**

- March 8, 2021, Council requested a Council-generated ordinance regarding hazard pay for grocery workers in Auburn;
- March 15, 2021, the Mayor and Deputy Mayor formed the Ad Hoc Committee for Hazard Pay for Grocery Workers;
- The Hazard Pay Ad Hoc Committee met two times and requested legal staff prepare Ordinance 6818 for Council's consideration;
- During the Council Study Session on April 26, 2021, Councilmember Jeyaraj requested a staff presentation to include a racial equity analysis but that request was not supported by a majority of Council;
- Four Councilmembers demonstrated consensus to move Ordinance 6818 forward for a vote on May 3.
- On May 10, 2021, the Council invited presentations by: NW Grocery Industry; Washington Food Industry Association; and UFCW-21 during the Council Study Session.

Reviewed by Council Committees:

Councilmember: Brown

Staff:

Meeting Date: May 17, 2021

Item Number: ORD.B

ORDINANCE NO. 6818

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, PROTECTING THE HEALTH, SAFETY, AND PROSPERITY OF GROCERY WORKERS AND THE GENERAL PUBLIC DURING THE EXISTING STATE OF EMERGENCY

WHEREAS, this ordinance relates to employment in Auburn; establishing labor standards requirements for additional compensation for grocery employees working in Auburn; and

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared that COVID-19 constituted a public health emergency of international concern, WHO's highest level of alarm; and

WHEREAS, on February 29, 2020, Washington Governor Jay Inslee declared a state of emergency for all counties throughout the state of Washington in response to new cases of COVID-19; and

WHEREAS, on March 3, 2020, Mayor Nancy Backus issued a proclamation of emergency related to the COVID-19 pandemic; and

WHEREAS, on March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a “Stay Home – Stay Healthy” order closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. The “Stay Home – Stay Healthy” proclamation identified grocery employees as “Essential Critical Infrastructure Workers” performing work to protect communities and ensure continuity of functions critical to public health and safety, as well as economic and national security; and

WHEREAS, in October 2020, the British Medical Journal, *Occupational & Environmental Medicine*, reported that grocery employees face a serious risk of COVID-19 infection and associated psychological distress. A study of 104 grocery employees at a grocery store in Boston, Massachusetts found that 20 percent tested positive for COVID-19 despite 91 percent of employees reporting wearing a face mask at work and 77 percent of employees reporting wearing masks outside of work. The positive rate of infection among grocery employees was five times as likely for those who interacted with customers than for those who did not. Additionally, the study found that 76 percent of employees had no symptoms, suggesting that these employees could be an important reservoir of asymptomatic infection. Further, 24 of the 99 employees who filled out a related medical health questionnaire also reported experiencing anxiety, and eight employees were deemed depressed from their questionnaire answers; and

WHEREAS, in November 2020, the Brookings Metropolitan Policy Program reported that the profits of top retail companies, including grocery businesses, soared during the pandemic while their employees earned low wages and, with few exceptions,

failed to receive consistent or meaningful additional compensation for performing life threatening work. The report found that the top retail companies in their analysis earned on average an extra \$16.7 billion in profit compared to the previous year – a 40 percent increase; and

WHEREAS, on January 3, 2021, the Center for Disease Control (CDC) reported that multiple COVID-19 variants are circulating globally that appear to spread more easily and quickly than other variations; and

WHEREAS, on January 5, 2021, Governor Jay Inslee announced the “Healthy Washington – Roadmap to Recovery,” a COVID-19 phased recovery plan; and

WHEREAS, grocery employees have been supporting grocery businesses’ operations and facilitating community access to food during the pandemic, despite facing a clear and present danger of workplace exposure to COVID-19 and receiving limited or inconsistent additional pay in recognition of this hazard; and

WHEREAS, the dangers of working during the pandemic are especially significant for Black, Indigenous, and People of Color (BIPOC) employees who are overrepresented among the retail frontline workforce and who are disproportionately impacted by COVID-19; and

WHEREAS, establishing a requirement for grocery employees to receive hazard pay for work performed in Auburn during the COVID-19 emergency will promote job retention, compensate them for the risks of working on the frontlines of a global pandemic, improve their financial ability to access resources for protecting themselves and their families from catching or spreading the virus or coping with illness caused by the virus,

and support the welfare of the greater community that depends on grocery employees for safe and reliable access to food; and

WHEREAS, recognizing the ongoing threat to frontline grocery employees, several cities have passed or have announced legislative efforts to require hazard pay of \$4 to \$5 per hour for grocery employees during the COVID-19 emergency; and

WHEREAS, establishing a labor standard that requires hazard pay for grocery employees is a subject of vital and imminent concern to the community and requires appropriate action by the City Council; and

WHEREAS, on April 19, 2021, Public Health – Auburn & King County reported that the current status is 199.7 positive cases per 100,000 residents; and

WHEREAS, as of April 19, 2021, Public Health – Auburn & King County reported a total of 6,161 positive cases including 99 deaths in Auburn. The Washington DOH reported a total of 359,810 positive cases including 5,394 deaths statewide; and

WHEREAS, the Washington DOH reported a total of 198 COVID-19 related outbreaks in retail settings, including 9 during the week of April 4-10, 2021; and

WHEREAS, the Washington DOH reported a total of 181 COVID-19 related outbreaks in grocery settings, including 4 during the week of April 4-10, 2021; and

WHEREAS, throughout the entirety of the COVID-19 emergency, grocery businesses have been operating in Auburn and relying upon the work of grocery employees who are highly vulnerable to health and safety risks; and

WHEREAS, grocery employees are essential workers performing services that are fundamental to the economy and health of the community during the COVID-19 crisis.

They face clear and present dangers at their jobs and continue to risk their lives and the health of their families to keep the community's food supply chain operating; and

WHEREAS, grocery employees cannot choose to work from home and must come to work to perform their jobs, which can involve substantial interaction with customers and/or ventilation systems that could potentially spread the virus. They are wearing masks, trying as much as possible to social distance, performing safety protocols, and learning new skills to decrease transmission of the virus to protect themselves and the public; and

WHEREAS, the risks of working during the pandemic are especially significant for BIPOC employees because they are overrepresented among the retail frontline workforce and are disproportionately impacted by COVID-19. Data shows that people of color are disproportionately experiencing hospitalization and dying of COVID-19; and

WHEREAS, the CDC reports that Black and Indigenous people, followed by Pacific Islanders and Latinx people, are disproportionately affected by COVID-19 due to long-standing inequities in social determinants of health, including overrepresentation in jobs that require customer contact such as grocery stores; lower incomes and barriers to wealth accumulation; lack of access to quality healthcare and fair treatment in the healthcare system; difficulties in finding affordable and quality housing; and inequities in access to high-quality education. The CDC reports that these determinants may increase risk of COVID-19 exposure, illness, hospitalization, long-term health and social consequences, and death. To stop the spread of COVID-19, the CDC states that resources must be equitably available for everyone to maintain physical and mental health; and

WHEREAS, Science in the News (SITN), a graduate student group at the Harvard Graduate School of the Arts and Sciences, reports that it is more difficult for BIPOC communities to stay safe during the pandemic and notes the importance of keeping these vulnerable populations in mind as the country slowly reopens the economy. SITN states that social distancing is a privilege that many people of color cannot afford because they work and reside in situations with higher risk of exposure to the virus: people of color are more likely to live in densely populated areas; reside in multigenerational and multifamily households; and use public transportation. Furthermore, SITN reports that many inequalities that pre-dated the pandemic have worsened, including limited access for Black and Latinx communities to primary care physicians, medical facilities, and COVID testing; and

WHEREAS, grocery businesses are profiting during the pandemic from the labor of employees who are working under dangerous conditions; and

WHEREAS, hazard pay, paid in addition to regular wages, is an established type of additional compensation for employees performing hazardous duties or work involving physical hardship that can cause extreme physical discomfort and distress; and

WHEREAS, grocery employees working during the COVID-19 emergency merit hazard pay because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus; and

WHEREAS, grocery employees have been working under hazardous conditions month after month. They are working in these hazardous conditions now and will continue

to face safety risks as the virus presents an ongoing threat, including the threat of more contagious variants, for an uncertain period; and

WHEREAS, ensuring that grocery employees are compensated for the substantial risks of working during the COVID-19 emergency promotes retention of these vital workers. Retention of grocery employees is fundamental to protecting the health of the community as these employees directly support public purchase of groceries and facilitate community access to food; and

WHEREAS, this ordinance is necessary in response to the COVID-19 emergency because the health threats that grocery employees face are as significant now as when this crisis began and are growing exponentially as community transmission is already surging, COVID-19 variants may further increase transmission of the virus and reduce therapeutic treatments. This is a rapidly evolving situation, with disproportionate risks and adverse impacts for BIPOC communities, that must be addressed without delay; and

WHEREAS, grocery employees are necessary to protect the public health because their work sustains access to groceries; hazard pay is one step to recognize the dangers facing these employees as they support our community, encourage them to continue their vital work, and provide them with additional financial resources; and

WHEREAS, an immediate requirement to provide grocery employees with hazard pay promotes retention of essential workers, improves the financial ability of grocery employees to access resources they need to stay safe and healthy, and ultimately supports the greater community that depends on grocery employees for consistent, safe and reliable access to food; and

WHEREAS, the Washington State Constitution Article XI, Section 11, empowers a city to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, RCW 35A.11.020 and 050 provide that the general grant of municipal power conferred to a non-charter code city shall be construed liberally and that such a city may adopt and enforce ordinances of all kinds appropriate to the good government of the city; and

WHEREAS, the Auburn City Council finds that this ordinance is consistent with good government of the City and in the public interest because it seeks to improve grocery worker safety, compensation for risk by requiring compliance with the federal, state, and county health standards, and to pay employees a wage that reflects the risk to the employees, the employees’ families, acquaintances, and the increased costs to be safe, to obtain and manage personal protective equipment and other expenses; and

WHEREAS, as the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

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

Section 1. Definitions.

For purposes of this ordinance:

“City” means the City of Auburn.

“Compensation” means the payment owed to an employee by reason of employment, including but not limited to, salaries, wages, tips, service charge

distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses.

“Employ” means to suffer or permit to work.

“Employer” means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee. More than one entity may be the “employer” if employment by one employer is not completely disassociated from employment by any other employer.

“Franchise” means an agreement by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designated, owned by, or licensed by the grantor or its affiliate; and
3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

“Franchisee” means a person to whom a franchise is offered or granted.

“Franchisor” means a person who grants a franchise to another person.

“Front pay” means the compensation the employee would earn or would have earned if reinstated to the employee’s former position.

“Grocery business” means a retail store operating in Auburn that:

1. Has 250 or more employees worldwide, and is primarily engaged in retailing groceries for offsite consumption including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods; and
2. “Grocery business” does not include convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks. “Grocery business” also does not include farmers’ markets.

“Grocery Employee” means any hourly individual employed by an employer in a retail store, including but not limited to full-time employees, part-time employees,

and temporary workers in Auburn that work exclusively in a grocery store facility and is unable to work remotely due to employment requirements.

“Hazard pay” means additional compensation owed to an employee on top of the employee’s other compensation, including but not limited to salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses.

“Successor” means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer’s business, a major part of the property, whether real or personal, tangible or intangible, of the employer’s business. For purposes of this definition, “person” means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip.

Section 2. Employee coverage.

For the purposes of this ordinance:

- A. Covered employees are limited to those grocery employees who perform work for a covered grocery business employer at a retail location in Auburn.
- B. Time spent by an employee in Auburn solely for the purpose of travelling through Auburn from a point of origin outside Auburn to a destination outside Auburn, with no employment-related or commercial stops in Auburn except for refueling or the employee's personal meals or errands, is not covered by this ordinance.

Section 3. Employer coverage.

- A. For the purposes of this ordinance, covered employers are limited to grocery businesses that employ 250 or more employees worldwide regardless of where those employees are employed, including but not limited to chains, or integrated enterprises.
- B. To determine the number of employees for the current calendar year:

1. The calculation is based upon the average number per calendar week of employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the preceding calendar year, the number of employees(s) for the current calendar year is calculated based upon the average number per calendar week of employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business.
2. All employees who worked for compensation shall be counted, including but not limited to:
 - a. Employees who are not covered by this ordinance;
 - b. Employees who worked in Auburn;
 - c. Employees who worked outside Auburn; and
 - d. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.
- C. Separate entities that form an integrated enterprise shall be considered a single employer under this ordinance. Separate entities will be considered an integrated enterprise and a single employer under this ordinance where a separate entity controls the operation of another entity. The factors to consider in making this assessment may include, but are not limited to:
 1. Degree of interrelation between the operations of multiple entities;
 2. Degree to which the entities share common management;
 3. Centralized control of labor relations;
 4. Degree of common ownership or financial control over the entities; and
 5. Use of a common brand, trade, business, or operating name.
- D. For purposes of this ordinance, covered employers do not include franchisors, franchisees, or franchises.

Section 4. Hazard pay requirements. Employers shall provide each employee with hazard pay at a rate of four dollars per hour for each hour worked in Auburn. No employer shall, as a result of this ordinance going into effect, take steps to reduce employee compensation so as to prevent, in whole or in part, employees from receiving

hazard pay at a rate of four dollars per hour for each hour worked in Auburn in addition to those employees' other compensation. Employers shall maintain records to establish the reason(s) for any reduction in employee compensation. Employers bear the burden the proof to show that the additional compensation is hazard pay for the purposes of working during the COVID-19 emergency.

Section 5. Enforcement power. Grocery employees who find that they have suffered or been injured physically or financially by a Grocery business by its failure to comply with this ordinance shall resort to any remedies that apply according to their employment contract or a collectively bargained agreement. Before resorting to remedies, the Grocery employees shall give a supervisor notice of the violation and give the Grocery business a reasonable time to cure or correct the violation. Violations that do not relate to compensation shall be "grieved" consistent with the Grocery worker's employment contract or an applicable collectively bargained agreement. If no collective bargaining agreement exists, or if those remedies have been exhausted, consistent with Article XI, Section 11, in addition to any existing right to pursue equitable or legal remedies, this ordinance authorizes Grocery employees or a union acting on a Grocery employee's behalf to bring an equitable or legal action to enforce or recover unpaid hazard pay in the superior court of Washington that has jurisdiction or to seek redress as provided by law.

Section 6. Penalties. For any successful claim by a Grocery employee against a Grocery business for unpaid hazard pay, the Grocery employee shall be entitled to recover all unpaid compensation; all attorneys' fees, court costs, and expenses; and up to a 50% penalty of the unpaid compensation as a court of competent jurisdiction may find appropriate.

Section 7. Termination or revocation. This ordinance shall cease to be effective on December 31, 2021, or when the Governor declares that the Washington State of Emergency related to the COVID-19 pandemic is over, whichever is sooner. The City Council may revoke or terminate this ordinance as and when it finds appropriate.

Section 8. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 9. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 10. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

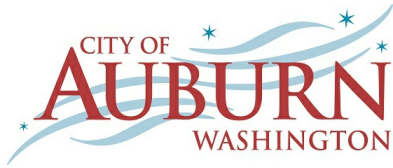
ATTEST:

Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

Kendra Comeau, City Attorney

Published: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6820 (Gaub)

Date:

May 10, 2021

Department:

Public Works

Attachments:

[Ordinance No. 6820](#)

[Exhibit A](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Ordinance No. 6820.

Background for Motion:

This ordinance modifies a variety of code sections related to the Auburn Airport management to address the change in management structure from contracted services to city employees and to address obsolete language and provide clarifications.

Background Summary:

Ordinance No. 6820 authorizes modifications to various sections of code related to the Auburn Municipal Airport. In 2019, the City of Auburn modified the management structure of the Airport to move away from contract management services to management by city employees. The modifications proposed are to complete the facilitation of this structural change. In addition, there were identified sections of obsolete code and areas needing clarification, improving the organization of the code, and simplifying the code related to airport management. The draft Ordinance 6820 reviewed by Council on May 10, 2021 included additional revisions related to Airport operations that have been moved to a separate ordinance for technical legal reasons, see Ordinance 6821 for additional information.

A summary of the revisions for Ordinance 6820 are as follows:

Repeal Sections:

2.18, Airport Supervisor

12.56.010, Airport Supervisor Defined

This position no longer exists and is not necessary to be listed in the code in this specificity.

Modified Sections (Exhibit A):

2.33, Municipal Airport Advisory Board

This section is modified to align with the Board's procedures and provide clarification

on board membership and responsibilities.

12.02.040, Administration

This modification is to modify the department responsibility for administration of section 12.56 related to the Airport within the Public Works Department.

12.56.015, Airport Manager Defined

This section is revised to address the modified management structure of the Airport.

The draft code revisions were reviewed by the Auburn Airport Advisory Board at their regular meeting on April 21, 2021 and comments received from the board members have been incorporated.

Reviewed by Council Committees:

Councilmember: Stearns

Staff: Gaub

Meeting Date: May 17, 2021

Item Number: ORD.C

ORDINANCE NO. 6820

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO THE MANAGEMENT OF THE AUBURN MUNICIPAL AIRPORT, REPEALING CHAPTER 2.18 AND SECTION 12.56.010, AND AMENDING SECTIONS WITHIN CHAPTERS 2.33, 12.02 AND 12.56.

WHEREAS, the City of Auburn modified the management structure of the Auburn Municipal Airport from contract management services to management by city employees; and

WHEREAS, the repeal and/or amendment of various applicable Auburn City Code provisions is necessary to facilitate this management structure change; and

WHEREAS, certain additional City Code sections and/or chapters should be amended and/or repealed to address obsolete language and to clarify, organize and simplify the City's code regarding airport management and operations.

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

Section 1. Repeal of certain Auburn City Code chapters and/or sections.

The following Auburn City Code Chapters and/or sections and underlying ordinance language are hereby repealed:

ACC Chapter 2.18	Airport Supervisor
ACC 12.56.010	Airport supervisor defined

Section 2. Amendment to City Code. Certain sections within Auburn City Code Chapter 2.33, and Auburn City Code sections 12.02.040 and 12.56.015 are amended to read as set forth on Exhibit A of this ordinance.

Section 3. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 4. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

APPROVED AS TO FORM:

ATTEST:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

EXHIBIT A – ORD. 6820

ACC 2.33.010 Creation.

There is created a board, which shall be known as the Auburn ~~municipal~~-airport advisory board, which shall consist of seven members, who shall serve without remuneration. The members shall be appointed by the mayor and confirmed by the city council. Members shall be:

A. City residents;

B. Employed by a business or organization with a physical location in the city; or

C. Actively working in or experienced in the aviation industry.

ACC 2.33.020 Appointment – Terms.

Annually, or more often as warranted, the members of the board shall elect a chair and ~~vice chairman and secretary~~ whose duties shall be the duties indicated by such designation. The term of office for the board members shall be set up to ~~three~~five years from the date of appointment. All appointees will serve until successors are appointed and qualified. If the board considers an issue that relates to a board member's business interest at the airport, the board member shall disclose the fact and nature of the business interest prior to the taking of any vote bearing upon said interest.

Membership on the board is intended to represent a broad cross section of airport users and therefore shall not have more than 3 members at any one time that represent the following areas:

1. A member who is also a business owner or representative of a business that is located on the airport field,
2. A member who has a direct storage, tie down, or lease agreement with the airport,
3. A member who is a member of a flight club that is based on the airport field,

ACC 2.33.030 Jurisdiction.

The board is a community and industry advisory body that reviews, discusses and advises on aviation and airport topics as requested by the mayor, city council and/or city

~~staff. when organized shall have jurisdiction to advise the city council and/or its committees regarding the following incidents involving the operation of the Auburn Municipal Airport: The board shall:~~

~~A. Review and advise on the Capital Improvement and significant maintenance programs for the Airport—Regarding construction, enlargement, improvement, maintenance, equipment and operation of the Auburn Municipal Airport facilities;~~

~~B. Review and recommend adoption and/or amendment of the—Regarding adoption and amendment of all need for rules and regulations of the Airportfor the government and use of the Auburn Municipal Airport facilities;~~

~~C. Regarding leasing or assignment to private parties, municipal or state governments or the national government, or departments of any of the same, for the operation or use of any space, area, improvements or equipment of the Auburn Municipal Airport;~~

~~CD. Review and recommend adoption Regarding the determination of the fee schedule related to the Airport of charges and/or rentals for the use of any properties owned or under the control of the Auburn Municipal Airport and regarding the charges for any services or accommodations and the terms and conditions under which such parties may be using it;~~

~~E. Regarding the securing and enforcement of liens as provided by law for liens and enforcements thereof; regarding the repairs of or improvements or storage or care of any personal property to enforce the payment of any such charges;~~

~~F. Regarding the exercise of all powers necessarily incidental to the exercising of the general and public powers granted in this chapter; and also regarding the exercise of all powers granted to the city by the laws of the state regarding the operation of municipal airports;~~

~~G. Repealed by Ord. 5924.~~

~~DH. Promote and foster the development of the Auburn Municipal Airport for the benefit of the citizens of the city;~~

~~EI. Develop comprehensive and long-range plans for airport development and financing;~~

~~F. J. Maintain liaison with other governmental bodies regarding municipal airport operations and financing. Review and advise on legislative issues as requested by the Airport Manager.~~

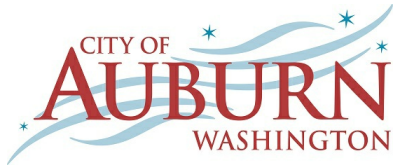
~~G. Advise on airport operations as requested by the Airport Manager.~~

ACC 12.02.040 Administration.

~~With exception of Chapter 12.56 ACC, Airport, which is administered by the director of the planning department, t~~This title shall be administered by the director of the public works department. The director ~~iss-are~~ responsible ~~for to~~ designat~~ion of~~ staff ~~and~~ to develop uniform procedures ~~for to~~ implement~~ing~~ the standards and procedures ~~of this Title set forth herein~~. In the absence of the public works director the city engineer will act in their behalf.

ACC 12.56.015 Airport manager defined.

“Airport manager” means ~~the person designated by the Public Works Director to manage the operations of the Auburn Airport. The airport manager shall at all times have authority to take such action as may be necessary for handling, policing, protecting and safeguarding airport users and property. The airport manager may suspend or restrict any or all airport operations when necessary in the interests of safety. any person designated by the airport supervisor or in the event that the city contracts for airport management services, then the person designated by the airport management entity, to manage operation of the Auburn Airport.~~



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 6821 (Gaub)

Department:

Public Works

Attachments:

[Ordinance No. 6821](#)

[Exhibit A](#)

Date:

May 10, 2021

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Ordinance No. 6821.

Background for Motion:

This ordinance modifies a variety of code sections related to the Auburn Airport operations and are proposed to address the changes in management structure from contracted services to city employees and add a new section regarding derelict aircraft.

Background Summary:

Ordinance No. 6821 authorizes modifications to various sections of code related to the Auburn Municipal Airport. In 2019, the City of Auburn modified the management structure of the Airport to move away from contract management services to management by city employees. The modifications proposed are to complete the facilitation of this structural change. In addition, there were identified sections of obsolete code and areas needing clarification, improving the organization of the code, and simplifying the code related to airport management and operations.

The language proposed in Ordinance 6821 was originally reviewed by City Council on May 10, 2021 under Ordinance 6820 but due to technical legal reasons, portions of the original Ordinance 6820 relating to operations were separated in to Ordinance 6821, however, the content is unchanged from the original draft reviewed on May 10, 2021.

A summary of Ordinance 6821 revisions are as follows:

Repeal Sections:

8.36, Ultralights

This section is no longer necessary in the City code but an appropriate level of detail will be included in revisions to the Airport Rules and Regulations that govern the use and operations of the Auburn Airport.

12.56 Section .200, .300, .310, .410

These sections are all related to Airport operations and are covered in the Airport Rules and Regulations or in the individual storage agreements entered into with the Airport Tenants and are no longer needed in the code.

New Section:

12.56.385, Derelict Aircraft

Is proposed to be added to better align with FAA expectations and regulations of the use of Airport property and provide clarity for Airport management of derelict aircraft situations.

Modified Sections (Exhibit A):

12.56, Airport

This section is modified to address operations of the Airport under City management, provide clarifications, improve organization, and simplify codes related to operations of the Airport.

The draft code revisions were reviewed by the Auburn Airport Advisory Board at their regular meeting on April 21, 2021 and comments received from the board members have been incorporated.

Reviewed by Council Committees:

Councilmember: Stearns

Staff: Gaub

Meeting Date: May 17, 2021

Item Number: ORD.D

ORDINANCE NO. 6821

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RELATING TO THE OPERATIONS OF THE AUBURN MUNICIPAL AIRPORT, REPEALING CHAPTER 8.36 AND VARIOUS SECTIONS OF CHAPTER 12.56, AMENDING VARIOUS OTHER SECTIONS OF CHAPTER 12.56, AND ADDING A NEW SECTION TO THE AUBURN CITY CODE.

WHEREAS, the City of Auburn modified the management structure of the Auburn Municipal Airport from contract management services to management by city employees; and

WHEREAS, this management structure change has resulted in the need to repeal and/or amend various provisions of the Auburn Municipal Code related to airport operations to clarify, organize and simplify the City's code regarding airport operations; and

WHEREAS, a new section regarding derelict aircraft should be added to the code to clarify and enhance airport staff's ability to address such aircraft on airport property for the safety and efficiency of airport operations.

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

Section 1. Repeal of certain Auburn City Code chapters and/or sections.

The following Auburn City Code Chapters and/or sections and underlying ordinance language are hereby repealed:

ACC Chapter 8.36	Ultralights
ACC 12.56.200	Aircraft – Posted traffic pattern conformance required
ACC 12.56.300	Aircraft – Operation in hangars
ACC 12.56.310	Aircraft – Moving

Section 2. New Section to City Code. A new section, ACC 12.56.385 “Derelict Aircraft,” is added to ACC Chapter 12.56 to read as follows:

ACC 12.56.385 Derelict Aircraft.

A. Storage of derelict aircraft prohibited. No person may park or store a derelict aircraft on airport property. A derelict aircraft is an aircraft or any aircraft components:

1. not being actively restored, constructed, or maintained; or
2. not in flyable condition; or
3. not certified airworthy by the Federal Aviation Administration.

B. Removal of derelict aircraft.

1. The Airport Manager or designee may immediately remove a derelict aircraft that obstructs a taxiway, runway, or parking area, or that endangers the safety of persons or property at the airport.
2. Otherwise, upon finding a derelict aircraft on airport property, the Airport Manager or designee may post a notice on the aircraft and/or give written notice to the aircraft owner requiring removal of the aircraft from airport property within 10 business days. The Airport Manager or designee may remove any derelict aircraft thereafter remaining on airport property.
3. In either case, the costs of towing, removal and/or storage of the aircraft shall be paid by its owner. The City shall not be liable for any costs or damages resulting from the removal.

Section 3. Amendment to City Code. Certain sections within Auburn City Code Chapter 12.56 are amended to read as set forth on Exhibit A of this ordinance.

Section 4. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 5. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____

EXHIBIT A – ORD. 6821

ACC 12.56.020 Use rules and regulations – Adopted – Obedience required.

Adopted Airport Rules and Regulations. The Airport Rules and Regulations as approved, supplemented and amended by the Airport Manager for continued operation of the Airport facilities and to be in conformance with all state and federal regulations governing the use and operation of the airport are herein referred to as the “rules and regulations” and are adopted by reference. ~~The mayor is authorized to promulgate administrative rules and regulations not inconsistent with this chapter.~~

All persons using the airport or any facilities thereon in any manner, including the operation of aircraft or motor vehicles, shall obey all applicable rules and regulations established or adopted.

ACC 12.56.070 City’s nonliability.

The privilege of using the airport and its facilities shall be conditioned upon the assumption of full responsibility and risk by the user thereof, and they shall release, hold harmless and indemnify the city, members of the city council and airport ~~committee~~board, its officers and employees from any liability or loss resulting from such use, as well as against claims of third persons so using the airport. The exercise of the privilege of use constitutes an acknowledgment that the city maintains the airport in a governmental capacity.

ACC 12.56.120 User’s responsibilities.

It shall be the responsibility of all aircraft owners, operators and users of the airport, or anyone who enters property under airport jurisdiction, to ~~become familiar with and~~ adhere to these adopted rules and regulations as currently written or amended. Entering onto property under jurisdiction of the airport constitutes usage.

ACC 12.56.130 Federal aircraft operation regulations adopted.

~~Federal Aviation Administration The rules and regulations promulgated by the Federal Aviation Agency and presently in effect and all additions or amendments thereto are referred to, as now enacted or hereafter amended are adopted by reference into this Chapter. and made a part of these regulations as fully in all respects as if particularly set forth in this chapter.~~

ACC 12.56.380 Aircraft storage hangars – Use restrictions.

Aircraft storage hangars are for the sole purpose of storing active aircraft. ~~No other item may be stored within except as provided in ACC 12.56.450(E), and except ladders, cans, boxes, etc., and then only with the prior approval of the airport supervisor.~~

ACC 12.56.440 Fire regulations.

- A. No aircraft shall be fueled or drained while the engine is running or while the aircraft is in a hangar.
- B. During all fuel operations the aircraft and appurtenances used in fueling shall be grounded by an approved method.
- C. Personnel engaged in fueling operations shall exercise care to prevent overflow of fuel or other damage to aircraft.
- D. Smoking or the lighting of an open flame shall be prohibited within 50 feet of any fuel operation.
- E. At no time shall an aircraft or vehicle be left unattended while fueling.
- F. Fueling operations shall be conducted at least 50 feet from any hangar or building.
- G. No cell phone use, electrical or radio equipment shall be operated during fuel operations, and master switches and magneto switches shall be in the “off” position.
- H. No aircraft shall be started when there is fuel on the ground, under or near the aircraft.
- I. No person shall drain or cause to be drained aircraft sumps on hangar floors or on asphalt-paved areas.
- J. Hangar floors shall be kept clean and free from oil, and no flammable solvent shall be used for cleaning purposes in shops, hangars or other buildings.

- K. No boxes, crates, rubbish, paper or other litter shall be permitted to accumulate on the airport or in any hangar or other building, and all oil, paint, dope and varnish containers shall be removed from hangars immediately upon being emptied.
- L. Degreasing of aircraft and/or aircraft engines shall be permitted only in maintenance shops or in areas so designated. Degreasing shall not be done by the spraying of a flammable liquid.
- M. No material of any nature shall be stored in such a manner so as to constitute a fire hazard.
- N. No smoking shall be permitted in any hangars where it is hazardous to do so or where “no smoking” signs are posted.
- O. Hangar entrances shall be kept sufficiently clear to permit ready access to buildings to combat fires.
- P. The storage, handling and use of all flammable liquids shall be as provided for in ACC 15.36A~~by the city fire prevention code~~.
- Q. Application of a Class I or II flammable liquid or the spraying of any flammable or combustible material is prohibited inside aircraft hangars.
- R. Batteries shall only be charged while the owner, operator or tenant is in attendance. Aircraft batteries shall not be connected to a charger when installed in an aircraft located inside or partially inside a hangar. Exceptions to this are approved, low amperage battery maintainers.
- S. Extension cords shall not be used as a substitute to permanent wiring and shall only be used with portable appliances.
- T. Extension cords shall be maintained in good condition without splices, deterioration or damage.
- U. Extension cords shall be plugged directly into an approved receptacle, power tap or multi-plug adapter and should serve only one portable appliance.
- V. Provide clear and unobstructed access to all fire extinguishers.
- W. Fire extinguishers shall be serviced annually by a qualified person.
- X. Aircraft hangars and storerooms shall be subject to annual and periodic inspections by airport staff and Valley Regional Fire Authority to ensure compliance with all laws, ordinances and these regulations.
- Y. All fueling operations shall comply with the most recent edition of the National Fire Prevention Association (NFPA) 407, Standard for Aircraft Fuel Servicing.
- Z. Whenever the provisions of this chapter, city ordinances, state and federal laws are not applicable for any reason to any situation involving the protection of persons and

property from the hazards of fire and explosions, the materials, methods of construction, installation, practices or operation necessary to provide such protection shall be in accordance with nationally recognized and accepted standards.

ACC 12.56.450 Vehicular traffic and parking regulations.

- A. Unless authorized by the airport ~~supervisor~~manager, no highway vehicle or bicycle shall be operated on the airport except on roadways, parking areas or places that are designated for such vehicles.
- B. No person shall operate any vehicle in a careless or negligent manner or in disregard for the safety of others or in excess of posted speed traffic signs, and in no event in excess of ~~1025~~ miles per hour.
- C. Highway vehicles shall always yield the right-of-way to aircraft on the ground or in the process of landing or taking off.
- D. Any accident involving motor vehicles on the airport shall be reported to the airport ~~supervisor~~manager. This shall not be taken to mean that the normal requirement to report accidents to the police department is waived, but is in addition to that requirement.
- E. Vehicles shall only be parked in a manner and in areas so designated for such purpose. Aircraft owners who lease storage hangar space from the city may, at the discretion of the airport ~~supervisor~~manager, park ~~one~~-automobile(s) ~~or pickup truck~~ within that hangar for the duration of time that the aircraft housed therein is on a ~~cross-country~~ flight, with the reservation that any and all such vehicles would be under the control of the airport ~~supervisor~~manager, and the vehicle(s) parked therein shall be so parked at the owner's risk and the city accepts no liability for loss thereof or damage, etc. ~~Locked vehicles parked in storage hangars must be parked with the gear selector lever in neutral, with the brakes released and one wheel adequately chocked.~~
- F. Illegally parked vehicles may be issued parking violation citations, moved to designated parking areas, impounded, or any combination of the above three provisions. A charge for such towing will be levied and the airport shall not assume any liability for damage while moving such vehicle.

ACC 12.56.470 Violation – Penalty.

In addition to the above penalties, anyone who violates or fails to comply with any provisions of this chapter or of the rules adopted hereunder ~~or under ACC 2.18.020~~ shall, upon conviction thereof, be punished as provided in ACC 1.25.050 and, unless a different penalty or provision is stated, any violation of this chapter or the airport rules and regulations or the airport minimum operating standards may be enforced pursuant to Chapter 1.25 ACC. A violation of any of the rules or regulations set forth in this chapter shall be deemed sufficient cause for the airport ~~supervisor~~manager to deny or prohibit access to or use of the airport by the responsible person or firm.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5593 (Comeau)

Date:

May 12, 2021

Department:

Legal

Attachments:

[Resolution No. 5593](#)

[Exhibit A](#)

Budget Impact:**Administrative Recommendation:**

City Council to adopt Resolution No. 5593.

Background for Motion:

City Council reviewed the Auburn Valley Human Society proposed fee schedule to take effect on July 1, 2021. City Council asked questions of AVHS Executive Director Phil Morgan and encouraged the new fee schedule to be implemented as soon as practicable.

Background Summary:

The City provides animal control related services to residents through a contract with the Auburn Valley Humane Society (AVHS). That contract provides that AVHS shall determine the prices for its services, and allows for periodic City review of AVHS prices to ensure they are competitive.

Pursuant to this contract, the City has reviewed the AVHS current price schedule and proposed revised price schedule to take effect on 7/1/21 (both are included in Exhibit A, attached to Resolution 5593). Upon review, the City believes that AVHS prices are competitive, with the exception of its current 6th and subsequent animal impound charges. Currently, those impound prices are substantially higher than those charged by other localities for similar services. In its proposed revised fee schedule, AVHS proposes to substantially reduce those fees by 7/1/21, bringing them to within a competitive price range. The City supports AVHS adoption of its proposed revised fee schedule, and further supports its adoption prior to 7/1/21, to the extent practicable.

The City supports the adoption of Resolution 5593

Reviewed by Council Committees:

Councilmember: Baggett

Staff:

Comeau

Meeting Date: May 17, 2021

Item Number:

RES.A

RESOLUTION NO. 5593

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, REVIEWING A SCHEDULE OF PRICES FOR SERVICES PROVIDED BY THE AUBURN VALLEY HUMANE SOCIETY TO ENSURE COMPETITIVE SERVICE PRICES

WHEREAS, the City provides its animal shelter services to the public through a contract with the Auburn Valley Humane Society (AVHS). The City's current AVHS contract was adopted by Resolution No. 4747 on September 19, 2011, and by its terms expires on December 31, 2026;

WHEREAS, paragraph IV(B) of the AVHS contract provides that AVHS shall establish the prices for its animal shelter services, subject to the City's right to periodically review them to ensure they are competitive with those of other animal shelters;

WHEREAS, AVHS provided its price and fee schedule for its services to the City for review on April 30, 2021. It is attached as Exhibit A to this resolution. Exhibit A includes both current AVHS fees, and proposed fee changes AVHS intends to make effective on July 1, 2021;

WHEREAS, pursuant to the City's contract with AVHS, the City Council has reviewed the current and proposed AVHS prices reflected in Exhibit A to compare them with the prices charged by other local animal shelters for similar services;

WHEREAS, the prices AVHS currently charges for its services in Exhibit A are relatively competitive and comparable with those charged by other area shelters, with the exception of its animal impound charges (\$1,120 or \$2,080 for a 6th or subsequent impound, depending on whether or not the impounded animal is altered). This current impound fee is markedly higher than those imposed by other compared localities, such as the City of Seattle or Metro Animal Services (which serves the Puyallup area). However, in its revised fee schedule to take effect July 1, AVHS lowers its impound fees to range from \$180 to \$580 (depending on the number of impounds, and whether the animal is licensed or altered), making AVHS impound fees comparable with those charged by other local animal shelters.

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

Section 1. After reviewing Exhibit A to ensure that the prices AVHS charges for its services are competitive, the City finds that AVHS currently charges competitive prices for its services in comparison to other local animal shelters, with the exception of its current charges for 6th or subsequent animal impounds, which AVHS intends to revise effective July 1, 2021 as set forth in Exhibit A. The City believes that the revised AVHS fee schedule in Exhibit A, to take effect on July 1, 2021, is competitive with those of other local animal shelters.

The City Council supports AVHS in its adoption of this revised fee schedule, and would support its adoption before July 1 to the extent practicable.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2021.

CITY OF AUBURN

NANCY BACKUS
MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

RESOLUTION 5593 – EXHIBIT A

Auburn Valley Humane Society / City of Auburn Animal Services Fee Chart

2019/2020/2021 Altered Animal Reclaim Fees (current)

IMPOUNDS (within 24mo period)	ALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$35	\$30 lic+\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$16 daily board
2nd Impound	\$70 + Microchip	+ \$10 Flea treatment + \$16 daily board
3rd Impound	\$140	+ \$10 Flea treatment + \$16 daily board
4 th Impound	\$280	+ \$10 Flea treatment + \$16 daily board
5th Impound	\$560	+ \$10 Flea treatment + \$16 daily board
6th & more Impounds	\$1,120	+ \$10 Flea treatment + \$16 daily board

2019/2020/2021 Unaltered Animal Reclaim Fees (current)

IMPOUNDS (within 24mo period)	UNALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$65	\$60 +\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$16 daily board
2nd Impound	\$130 + Microchip	+ \$10 Flea treatment + \$16 daily board
3rd Impound	\$260 + S/N Surgery	+ \$10 Flea treatment + \$16 daily board
4 th Impound	\$520 + S/N Surgery	+ \$10 Flea treatment + \$16 daily board
5th Impound	\$1,040 + S/N Surgery	+ \$10 Flea treatment + \$16 daily board
6th & Subsequent Impounds	\$2,080 + S/N Surgery	+ \$10 Flea treatment + \$16 daily board

2021/2022 Altered Animal with current COA Pet License Reclaim Fees (proposed 7/1/2021)

IMPOUNDS (within 24mo period)	ALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$25	\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$20 daily board
2nd Impound	\$50 + Microchip	+ \$10 Flea treatment + \$20 daily board
3rd Impound	\$100	+ \$10 Flea treatment + \$20 daily board
4 th Impound	\$200	+ \$10 Flea treatment + \$20 daily board
5th + Impound	\$350	+ \$10 Flea treatment + \$20 daily board

2021/2022 Altered Animal without current COA Pet License Reclaim Fees (proposed 7/1/2021)

IMPOUNDS (within 24mo period)	ALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$40	\$30 lic+\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$20 daily board
2nd Impound	\$80 + Microchip	+ \$10 Flea treatment + \$20 daily board
3rd Impound	\$160	+ \$10 Flea treatment + \$20 daily board
4 th Impound	\$320	+ \$10 Flea treatment + \$20 daily board
5th + Impound	\$580	+ \$10 Flea treatment + \$20 daily board

RESOLUTION 5593 – EXHIBIT A

2021/2022 Unaltered Animal with current COA Pet License Reclaim Fees (proposed 7/1/2021)

IMPOUNDS (within 24mo period)	UNALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$45	\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$20 daily board
2nd Impound	\$90 + Microchip	+ \$10 Flea treatment + \$20 daily board
3rd Impound	\$180 + S/N Surgery	+ \$10 Flea treatment + \$20 daily board

2021/2022 Unaltered Animal without current COA Pet License Reclaim Fees (proposed 7/1/2021)

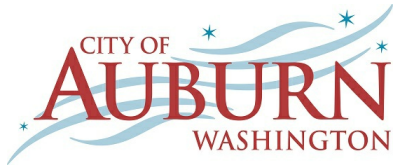
IMPOUNDS (within 24mo period)	UNALTERED ANIMAL	ADDITIONAL FEES
1 st Impound	\$65	\$60 +\$15 rab+\$16 vac/deworming+\$10 flea treatment+\$20 daily board
2nd Impound	\$130 + Microchip	+ \$10 Flea treatment + \$20 daily board
3rd Impound	\$260 + S/N Surgery	+ \$10 Flea treatment + \$20 daily board

2021/2022 AVHS Fees for COA Mandated Services

COA MANDATED SERVICE	Current AVHS Fees for COA Mandated Services as of 1/1/2019	Proposed AVHS Fees for COA Mandated Services as of 7/1/2021
Microchip	\$45	\$45
Cat Neuter	\$75	\$75
Cat Spay	\$95	\$105
Dog Neuter <50lbs	\$115	\$140
Dog Neuter 51-75lbs	\$125	\$165
Dog Neuter 76-100lbs	\$125	\$185
Dog Neuter >100lbs	\$125	\$205
Dog Spay <25lbs	Did not offer	\$155
Dog Spay 26-50lbs	\$125	\$180
Dog Spay 51-75lbs	\$135	\$200
Dog Spay 76-100lbs	\$145	\$225
Dog Spay >100lbs	\$145	\$245
Feline Pregnant/Obese	\$30	\$30
Canine Pregnant/Obese	\$40	\$40
Cryptorchid Neuter	\$40	\$40
Injectable Pain Medication	\$20	\$20
Take-Home Pain Medication	\$20	\$20
Elizabeth Collar	\$15	\$15

City of Auburn Pet Licensing

Unaltered Dog/Cat	\$60
Altered Dog/Cat	\$30
Senior Citizen Dog/Cat Altered	\$15
Disabled Citizen Dog/Cat Altered	\$15
Juvenile Dog/Cat Unaltered <6mo	\$15
Replacement Tag	\$5



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5596 (Comeau)

Date:

May 11, 2021

Department:

Legal

Attachments:

[RES No. 5596](#)

[Legacy Signed Access and Air Easement](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to adopt Resolution No. 5596.

Background for Motion:

The developer has been issued the building permit authorizing them to construct the building and they have agreed to pay a fair market value for the easement rights. The project will further increase the use and activation to this park property and downtown.

Background Summary:

The City issued building permit BLD18-0140 for the development of a private Mixed-use development project on privately owned property on Main Street, across from City Hall. Portions of that project will take pedestrian access from the City owned property located at the southwest corner of Main and Division street. This easement protects access to and from the project across a portion of the City property while also allowing for the encroachment of balconies and awnings above the same City property.

The easement encumbers only a small portion of the City parcel, that being the western and southern most 8ft of the parcel.

In the future should the owners of the project decide to demolish the building this easement will terminate.

The \$65,000.00 that the developer will pay represents the fair market value for the easement rights granted.

Reviewed by Council Committees:

Councilmember: Stearns

Staff:

Comeau

Meeting Date: May 17, 2021

Item Number:

RES.B

RESOLUTION NO. 5596

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INGRESS, EGRESS, AND AIR RIGHTS EASEMENT BURDENING CITY OWNED PROPERTY FOR THE BENEFIT OF AUBURN CITY CENTER SENIOR LIVING ASSOCIATES, LLC

WHEREAS, the City of Auburn owns a lot at the intersection of West Main Street and Division Street, which is used as a downtown public park plaza; and

WHEREAS, Auburn City Center Senior Living Associates, LLC is constructing a seven-story mixed-use building permitted by the City of Auburn under building permit BLD18-0140 which will abut the plaza on the south and west edges; and

WHEREAS, for the benefit of their development, Auburn City Center Senior Living Associates, LLC desires to purchase both an air rights easement and an ingress & egress easement across and above the west 8 feet and south 8 feet of the plaza, except for the east 10-foot portion of the south 8 feet; and

WHEREAS, the City has negotiated a price for the easement of \$65,000.00, which is considered to be the current fair market value for the property rights being granted.

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

Section 1. The Mayor is authorized to execute an easement in substantial the form of the easement attached as Exhibit A granting Auburn City Center Senior Living Associates, LLC and any successors in interest the rights of Ingress, Egress, and Air Rights on and above the City property at West Main Street and Division Street,

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

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

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

INGRESS, EGRESS SURFACE & AIR RIGHTS EASEMENT

Grantor/Borrower: CITY OF AUBURN

Grantee/Assignee/Beneficiary: AUBURN CITY CENTER SENIOR LIVING
ASSOCIATES, LLC

Legal Description/STR: Portions of Lot 1 and Lot 2, Block 2, Town of Slaughter,
Volume 2, Page 56 NE 1/4 of SE 1/4 S13 T21N R4E [Full
Legal Description on Exhibit A attached hereto.]

Assessor's Tax Parcel ID#: 7815700085

GRANTOR, CITY OF AUBURN, WASHINGTON, for and in consideration of the payment of Sixty Five Thousand Dollars and No Cents (\$65,000.00) and other valuable consideration, grants to AUBURN CITY CENTER SENIOR LIVING ASSOCIATES, LLC, the following easements, subject to the terms and conditions set forth herein (collectively, the "Easement" or the "Agreement"):

A perpetual exclusive vertical easement for the use of all its air rights in the volume of air space defined as the Air Easement Area. The sole permitted use of the foregoing easement is for the construction, maintenance, occupancy, and use of the improvements as permitted by the City of Auburn under building permit BLD18-0140, which is on file with the City of Auburn and is incorporated by this reference.

EASEMENT AREA: The Air Space Easement Area consists of the volume of air directly above the ground or finished pavement surface of the Surface Easement Area that is reasonably necessary to accommodate the permitted uses of the easement.

A perpetual non-exclusive access easement over, through, and across the Surface Easement Area giving Grantee, including its tenants, subtenants, agents, contractors, and employees, the absolute right, at times as may be necessary, for immediate pedestrian and non-motorized ingress

and egress upon said Easement Area; provided, however, that Grantee's easement rights shall not be deemed or act to exclude the public from ingress and egress upon said Easement Area.

EASEMENT AREA: The Surface Easement Area consists of that portion of LOT 1 AND THE EAST 4 FEET OF LOT 2, BLOCK 2, TOWN OF SLAUGHTER, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 56, IN KING COUNTY, WASHINGTON legally described in **Exhibit A** and depicted in **Exhibit B** attached hereto.

The foregoing easements are granted subject to and conditioned upon the following terms, conditions, and covenants which the parties promise to faithfully and fully observe and perform:

1. **MAINTENANCE OF THE SURFACE EASEMENT AREA SURFACE.** The Grantee, at its sole cost and obligation, shall keep the surface areas located within the Surface Easement Area in a neat and clean manner, free from debris, obstructions and graffiti. Under the direction of the Grantor, but at the sole cost of Grantee, Grantee shall repair any damage to the Surface Easement Area caused by them, their contractors, agents or tenants. Grantee shall remove any obstructions, graffiti or debris located within the Surface Easement Area within 24 hours, when practical, and within a reasonable time period otherwise. Grantee shall immediately remove or cause to have removed any obstructions which may present a safety hazard to either Parties' property or to any person. Grantee further agrees to not place, or to cause to be placed any permanent structures within the Surface Easement Area, and not to undertake, authorize or permit to any construction or excavation on or near the Surface Easement Area which might in any fashion damage the Area's surface. If the Grantee fails to remedy any condition that the City Engineer deems a safety hazard within the time specified in a written notice from the Engineer, the Grantor may correct the condition as is identified in the written notice and Grantee shall pay the out-of-pocket expenses of the work and if it fails to do so within ninety (90) days of notice, which shall include reasonable supporting documentation, the unpaid amount for such expenses shall be secured by a continuing lien on the dominant estate for the benefit of Grantor.

Grantor retains the right to use the Surface Easement Area as long as such use does not interfere with the rights granted by the foregoing easements. Notwithstanding damage caused by Grantee or any of Grantee's tenants as described above, the Grantor in its sole cost and obligation is responsible for the maintenance, repair, replacement and care (together "Work") to the surface and subsurface of the Grantor's property located within the Surface Easement Area. The Grantor has full discretion and authority as to the type of surface, repair and replacement of the surface and subsurface used or placed upon Grantor's property. Grantor shall make all reasonable accommodations to protect and maintain access to the Grantee's property while fulfilling its work obligations. For purposes of this paragraph, reasonable access includes ingress and egress to only a portion of the Surface Easement Area during a period of no more than 90-days in a 365-day period when it is reasonably necessary for Grantor to perform maintenance, repair, or construction work on the servient estate, as long as Grantor does not prevent ingress and egress to any entryway during this period that is the sole access to Grantee's building or to the leasehold of a building tenant. Grantee agrees that it will not install awnings, balconies or other improvements that obstruct or impede Grantor's maintenance, operations, repair, or replacement of Grantor's property and facilities, including, but not limited to, lighting and stormwater management systems.

Grantee acknowledges the presence of a subsurface stormwater management system that limits the loading capacity of the property's surfaces. Grantee agrees to not exceed the load limits designated by the Grantor and agrees to replace in-kind any portion of the stormwater management system or other Grantor facilities damaged by the Grantee in accordance with the City's standards and requirements.

2. MAINTENANCE OF THE BUILDING IMPROVEMENTS WITHIN THE AIR SPACE EASEMENT AREA. Grantee, as owner of those improvements located within the Air Space Easement Area, shall at their sole cost and expense maintain all awnings, balconies, and other improvements that are within the Area in a clean, safe, and structurally sound condition and with awnings being free of rips and tears. Grantee shall immediately after notice repair or correct or cause to be repaired or corrected any such structure or item on such structure that presents a hazard to persons using the Grantor's property. The maintenance, cleaning, and repair of all such improvements will be accomplished in a manner that will not interfere with the use of the dominant estate, including the Surface Easement Area. If the Grantee fails to remedy any condition that the City Engineer deems a safety hazard within the time specified in written notice from the Engineer, the Grantor may correct the condition as identified in the written notice, assess the amount on Grantee, and Grantee shall pay the cost of the remedial work plus an additional 10% for administrative and management purposes. If Grantee fails to pay the amount within ninety (90) days of notice, which shall include reasonable supporting documentation, the unpaid amount for such expenses shall be secured by a continuing lien on the dominant estate for the benefit of Grantor.

The Grantee shall prevent any discharges from cleaning or maintenance activities from entering the stormwater catch basins and thence into the stormwater detention facility located in the Grantor's property legally described in Exhibit A.

3. INDEMNIFICATION Grantee, its successors and assigns, covenants and agrees to defend, indemnify and hold harmless Grantor and Grantor's officers, employees, representatives, agents, successors and assigns (hereinafter collectively the "Indemnitees") from all claims, losses, expenses, liens (including, without limitation, liens or claims for services rendered or labor or materials furnished), encumbrances, liabilities, penalties, judgments, settlements, fines, damages, environmental response and cleanup costs, proceedings, actions (civil, criminal or administrative), and costs, including without limitation, attorney's fees, court costs, consultant fees, expert fees and other litigation-related expenses, brought against, imposed upon, suffered by or paid by Indemnitees and arising out of or in connection with or resulting from, indirectly or directly: (i) construction, maintenance, installation or repair activities within the Air Space and Surface Easement Areas by Grantee, its agents, employees, representatives, and successors and assigns; or (ii) the failure of Grantee its agents, employees, representatives, and successors and assigns to properly to maintain any structures within the Air Space and Surface Easement Areas in good condition and repair, or (iii). use or occupancy of the Air Space and Surface Easement Area by Grantee, its agents, employees, tenants, contractors, invitees, and successors and assigns.

4. INSURANCE. Grantee and its successors and assigns, shall obtain and maintain during the entire term of this Agreement a policy or policies of general public liability insurance, including broad form endorsements, on an occurrence basis, naming City of Auburn as an additional insured using ISO form CG 20 12, with combined policy limits of not less than \$2,000,000 for injuries, including accidental death, to any one person, and subject to the same limit for each person, not less than \$2,000,000 for any one accident involving two or more persons; and property damage liability insurance shall not be less than \$2,000,000, for any one accident and not less than \$2,000,000 aggregate with respect to the improvements to be located within the Surface and Air Space Easement Areas.

5. EASEMENT TERMINATION: The rights granted within this Easement are specific to the development and construction of the improvements as permitted by the City of Auburn under building permit BLD18-0140. Upon the building being demolished causing elements of the building to no longer occupy the air rights granted in this easement, this Easement and all rights and privileges granted within this easement shall automatically terminate. However,

failure of the building elements to occupy the air rights granted in this Easement as a result of repair, replacement, fire, or acts of God shall not be cause for termination.

At such time as the owner(s) of the building elect to demolish the building they shall record a release of easement. Failure to record any such release of easement does not prevent the termination of this Easement.

6. **RIGHT OF SPECIFIC PERFORMANCE & PRESERVATION OF RIGHTS:** In addition to all other rights available at law, each Party shall have the right to require the other Party to specifically perform such Party's obligations hereunder, including the right to enjoin the other Party from exercising any right that may interfere with the rights granted hereunder to the other Party. Failure by either party to enforce its rights at any time shall not be deemed a waiver of such rights and waiver of a default by the other Party shall not be deemed a waiver of the Party's right to assert its rights in response to any subsequent or other default.

7. **CREATION OF LIEN.** By execution of this Agreement, Grantee grants Grantor the authority, upon notice, to lien the dominant estate to secure unpaid assessments for the costs of maintenance of the Surface and Air Space Easements Areas as provided herein for the benefit of the City.

8. **NOTICES.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given (a) when actually received by that Party, (b) when sent via overnight courier service and confirmation of receipt by the addressee is obtained from the courier, or (c) three (3) days after being addressed to the Party at its published address and deposited in the United States mail with postage prepaid, or in registered or certified mail with return receipt requested.

9. **COVENANTS RUNNING WITH THE LAND.** The parties acknowledge and agree that the easements, and other rights conferred in this Easement, and the indemnity and other obligations are intended to, and do, constitute covenants that run with the land of the Burdened Property (servient estate) and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns, including those claiming by, through, or under Grantee as owners and holders of the Easements or holding any rights to the Air Space or Surface Easement Areas, subject only to paragraph 5, Easement Termination, above.

10. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the Parties, and supersedes all prior understandings relating to them, whether written or oral.

11. **LEGAL CONSTRUCTION.** This Agreement shall not be construed more or less favorably between the Parties by reason of authorship as both Parties had an opportunity to have the document reviewed by their counsel. This Agreement may be executed in duplicate original counterparts and all copies of this Agreement so executed shall be deemed to be one agreement.

12. **RECORDING.** Grantee shall, at its expense, record this Agreement with the King County Recorder. After this Agreement is recorded, Grantee shall provide Grantor with a copy of the recorded Agreement.

Dated this _____ day of _____, 2021.

CITY OF AUBURN, WASHINGTON

Nancy Backus, Mayor

STATE OF WASHINGTON)
COUNTY OF KING) ss

I hereby certify that I know or have satisfactory evidence that Nancy Backus is the person who appeared before me, and acknowledged that she signed this instrument and on oath stated that she was authorized to execute the instrument as the Mayor of the City of Auburn and acknowledged it to be that party's free and voluntary act for the uses and purposes mentioned in the instrument.

Dated _____

Notary Public in and for the State of _____
Residing at _____
My appointment expires _____

Accepted and Approved by:

AUBURN CITY CENTER SENIOR LIVING ASSOCIATES, LLC
By: Auburn City Center Senior Living Development Associates, LLC,
Its Managing Member

B. M. Park

Bryan M. Park, Manager

4/30/2021

Date

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I hereby certify that I know or have satisfactory evidence that Bryan M. Park is the person who appeared before me, and acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument as the Manager of Auburn City Center Senior Living Development Associates, LLC, the Managing Member of Auburn City Center Senior Living Development, LLC, and acknowledged it to be that party's free and voluntary act for the uses and purposes mentioned in the instrument.

Dated April 30, 2021



Amanda L Hagen

Notary Public in and for the State of Washington
Residing at Puyallup
My appointment expires 8-9-2022

Exhibit A
Surface Easement Area Legal Description

THE WEST 8.00 FEET TOGETHER WITH THE SOUTH 8.00 FEET, EXCEPT THE EAST 10.00 FEET OF THE SOUTH 8 FEET OF THE FOLLOWING DESCRIBED PARCEL:

LOT 1 AND THE EAST 4 FEET OF LOT 2, BLOCK 2, TOWN OF SLAUGHTER, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 56, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THAT PORTION OF THE VACATED ALLEY WHICH WOULD ATTACH BY OPERATION OF LAW AS PROVIDED BY ORDINANCE NO. 6193 RECORDED SEPTEMBER 12, 2008 UNDER RECORDING NO. 20080912001319.



Exhibit B
Surface Area Easement Depiction

