

**City Council Study Session Muni  
Services SFA**

**June 10, 2024 - 5:30 PM**

**City Hall Council Chambers**

**AGENDA**

**Watch the meeting LIVE!**

**Watch the meeting video**

Meeting videos are not available until 72  
hours after the meeting has concluded.

**I. CALL TO ORDER**

**II. PUBLIC PARTICIPATION**

**A. Public Participation**

The Auburn City Council Study Session Meeting scheduled for Monday, June 10, 2024 at 5:30 p.m. will be held in person and virtually.

Virtual Participation Link:

To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:

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

To listen to the meeting by phone or Zoom, please call the below number or click the link:

Telephone: 253 215 8782

Toll Free: 877 853 5257

Zoom: <https://us06web.zoom.us/j/89216044445>

**B. Roll Call**

**III. AGENDA MODIFICATIONS**

**IV. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS**

**A. Briefing - Comprehensive Emergency Management Plan (CEMP) (Hinman) (30 Minutes)**

**B. REDI Report Out**

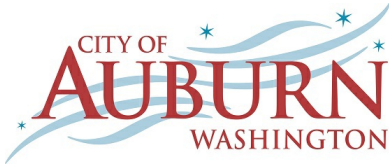
**V. AGENDA ITEMS FOR COUNCIL DISCUSSION**

**A. Ordinance No. 6942 (Gaub) (5 Minutes)**

An Ordinance granting to Zayo Group, LLC, a Delaware Limited Liability Company, a Franchise for Wireline Telecommunications

## VI. ADJOURNMENT

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



## AGENDA BILL APPROVAL FORM

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**Agenda Subject:**

Briefing - Comprehensive Emergency Management Plan (CEMP) (Hinman) (30 Minutes)

**Date:**

June 5, 2024

**Department:**

**Attachments:**

[CEMP Table of Contents](#)

[2024 EM and CEMP Briefing to City Council](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

For discussion only.

**Background for Motion:**

**Background Summary:**

**Reviewed by Council Committees:**

**Councilmember:** Cheryl Rakes

**Staff:** Dana Hinman

**Meeting Date:** June 10, 2024

Item Number:

City of Auburn, Washington  
Comprehensive Emergency Management Plan  
October 2019

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**EMERGENCY CONTACT NUMBERS**

If immediate emergency or incident assistance is required, contact ValleyCom:

**24-Hour Emergency Telephone:                    911**

For non-emergency assistance, please contact:

**Auburn Police Department:                    253-931-3080**

**Auburn Emergency Management:            253-876-1925**

**Valley Regional Fire Authority:            253-288-5831**

The City of Auburn's 2019 Comprehensive Emergency Management Plan (CEMP) will be distributed electronically as well as hard copy. A redacted version will be available on the City of Auburn's website at <http://www.auburnwa.gov>.

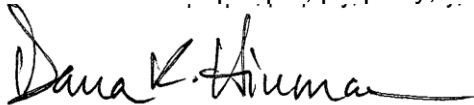
## FOREWARD

The City of Auburn sincerely appreciates the cooperation and support from those agencies, departments, and local jurisdictions that have contributed to the revisions, development and publication of the 2019 City of Auburn Comprehensive Emergency Management Plan (CEMP).

Coordination of the CEMP represents a committed and concerted effort by the City of Auburn, Valley Regional Fire Authority, and other local jurisdictions to emergency management. The CEMP demonstrates the ability of a large number of agencies to work together to achieve a common goal.

Special recognition for the document preparation and integration of materials into this plan go to the City of Auburn Emergency Management Committee and the City of Auburn Emergency Management Division, without whose efforts this document would not have been produced.

The CEMP is one of many efforts to prepare all people in the City for emergencies and disasters. The CEMP is formatted to be consistent with the King and Pierce County CEMPs and the Washington State CEMP, as well as the National Response Framework (NRF), complete with Emergency Support Functions (ESFs) as single function activities. Standardized plans throughout the State help improve interoperability between local, county, state, and federal levels of government. The CEMP improves our ability to minimize the impacts of emergencies and disasters on people, property, economy, and the environment of the City of Auburn.



Dana Hinman  
Director of Administration/Director of Emergency Management  
City of Auburn



## LETTER OF PROMULGATION

### To All Recipients:

It is the policy of the City of Auburn to provide the emergency organization and resources to minimize the effects of incidents; prepare to respond to disaster situations; maximize population survival; and preserve property; that will ensure the orderly and fast return to normal community life in the City of Auburn in the event of a natural or technological disaster.

The City of Auburn Comprehensive Emergency Management Plan (CEMP) has been developed to establish the special policies, guidelines, and procedures that will provide response personnel with the information and guidance required to function quickly and effectively in a disaster situation. It is a goal of this plan to help develop city, business, and resident self-sufficiency for a minimum of 14 days after a disaster. This plan supersedes all previous versions of the Auburn CEMP.

It should be understood that emergencies and disasters are dynamic events that require flexibility and the ability to solve challenges that are presented. Circumstances may dictate deviation from this plan in order to have the best possible response. This plan may be supplemented by the King County Comprehensive Emergency Management Plan, the Puget Sound Regional Catastrophic Disaster Coordination Plan and Annexes, the Washington State Comprehensive Emergency Management Plan, and other applicable plans.

All city departments are directed to take appropriate actions to implement this plan and to maintain the necessary capabilities to respond effectively to emergencies and disasters. All outside entities involved in the plan are requested to cooperate with the city in order to coordinate the total disaster response within the community.

Adopted pursuant to City of Auburn Resolution # 5459 by the City Council of the City of Auburn, Washington at its regularly scheduled meeting on October 21, 2019.

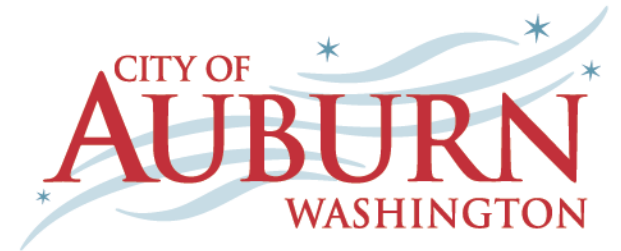


Nancy Backus  
Mayor,  
City of Auburn

# Emergency Management & CEMP Briefing

City council's role in emergency management and the  
Comprehensive Emergency Management Plan (CEMP)

June 10, 2024



# What is Emergency Management?

- Coordinate the City's **response to and preparation for** incidents.
- Incidents are emergencies or planned events that may go beyond the scope of normal local response capacity.



# Emergency Management Program Areas



## Incident Stabilization

EOC Activations  
Logistical Support  
Emergency Communications  
Stakeholder and partner support  
24/7 Duty Officer



## Emergency Plans

CEMP  
COOP  
Regional Hazard Mitigation Plan  
Capability-Specific Plans  
Planning Support



## Training and Exercise

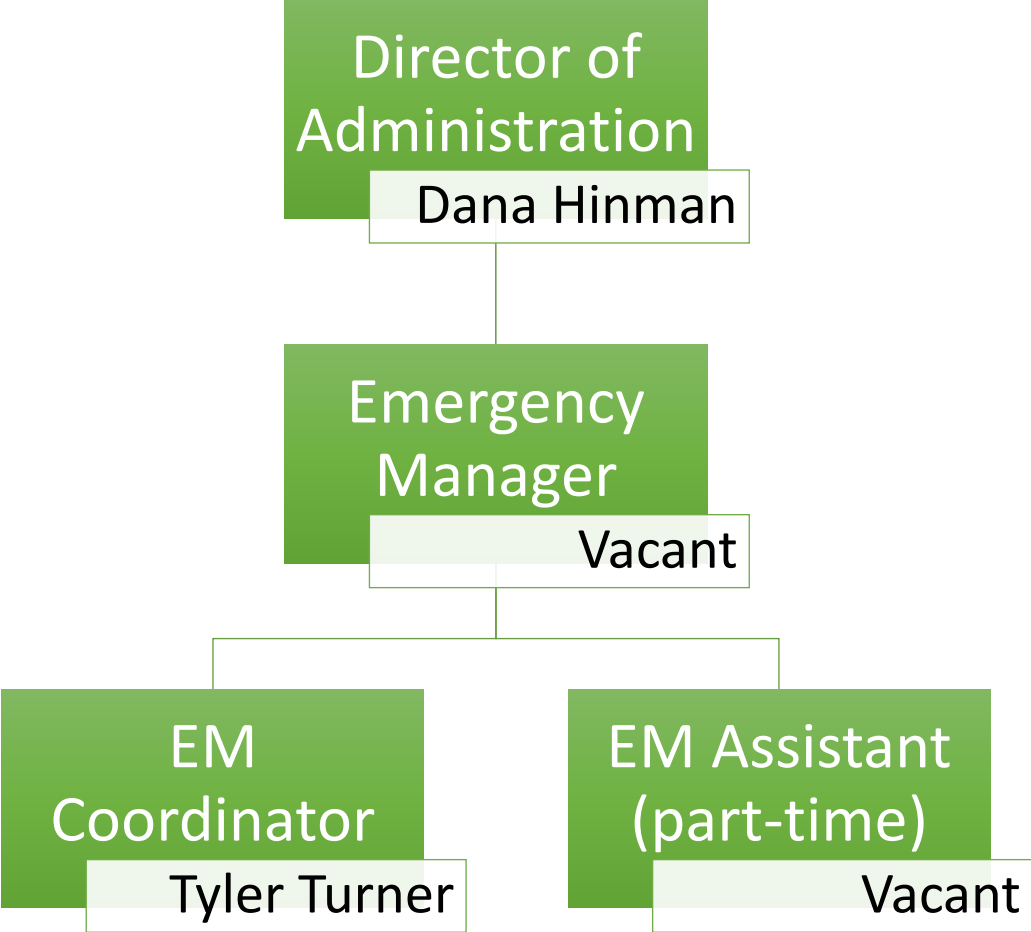
EOC Training  
Evacuation Drills  
Emergency Exercises  
NIMS Compliance



## Education and Outreach

Preparedness Classes  
Community Emergency Response Team (CERT)  
Auburn Area Emergency Communications Team (AAECT)  
Tabling and Events

# Emergency Management Staff



# Legislative History of Emergency Management and Planning in Auburn

- Emergency Preparedness created in 2007 via **Ordinance 6088**
- **ACC 2.75** “...establishes an emergency management organization for the city of Auburn, pursuant to Chapter 38.52 RCW, for the purpose of performing local emergency management functions.”
- Ordinance 6088 adopted the **National Incident Management System (NIMS)** framework developed by the Department of Homeland Security in 2004 in response to the attacks on 9/11
- Use of NIMS framework and principles aligns the City of Auburn with the **National Response Framework (NRF)**, state, and county emergency response operations.

# Legislative History of Emergency Management and Planning in Auburn

- Auburn's first CEMP adopted by council in 2009 (updated every five years)
- Council approval to accept of Washington State Emergency Management Performance Grant (EMPG) – annually
- Council ratification of local emergency declarations by Mayor
- Council budget and policy approvals for Emergency Management functions

# The National Incident Management System (NIMS) Compliance

- Local, state, territorial, and tribal nation jurisdictions are required to **adopt NIMS** in order to receive federal Preparedness grants (Ord. 6088)
- Designate and maintain a **point of contact** to serve as the principal coordinator for the implementation of NIMS. (ACC 2.75.040)
- Ensure that incident personnel (*including elected officials*) receive **pertinent NIMS training** in alignment with the NIMS Training Program. (Ongoing)



# Emergency Plans

## Comprehensive Emergency Management Plan (CEMP)

The CEMP is a standardized plan that is informed by:

- National Response Framework (NRF)
- Washington State Office of Emergency Management
- King and Pierce County Offices of Emergency Management

### **Other Emergency Plans in Auburn:**

- Continuity of Operations Plan (COOP)
- Continuity of Government Plan (COG)
- Regional Hazard Mitigation Plan (annex to King County's plan)

# CEMP Snapshot

The CEMP is designed to:

- Provide the organization and resources to **minimize the effects of incidents** in the event of a natural or technological disaster
- **Prepare to respond** to disaster situations
- **Maximize population survival**
- **Preserve property**
- Establish special policies, guidelines, and procedures that will provide response personnel with the **information and guidance required to function quickly and effectively** in a disaster situation
- Create an **orderly and fast return to normal community life** in the city of Auburn

# CEMP Snapshot

The CEMP contains:

- Basic Plan
- Listing and details of Auburn's Emergency Support Functions (ESF)
- Support annexes

# Council Role in Emergency Management (Non-incident)

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Review and approve required emergency plans

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Complete required training for elected officials

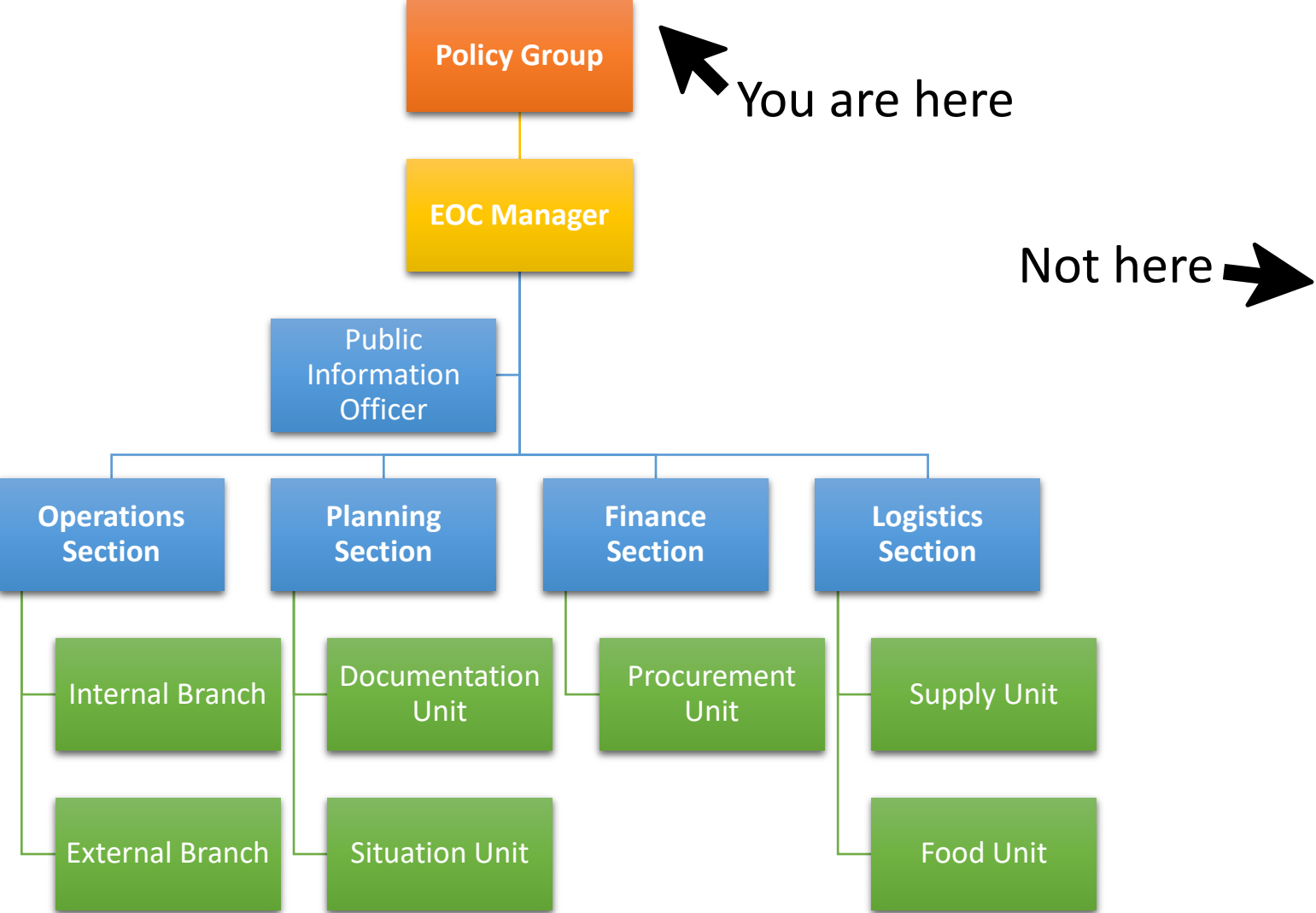
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Be familiar with CEMP and role during an incident

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Pass regulations or codes that build community resilience

# Emergency Operations Center (EOC)



# Council Role in Emergency Management (incident response)

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Provide strategic policy guidance and resources

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Understand role within Incident Command System (ICS)

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Execute statutory authority to respond to incident

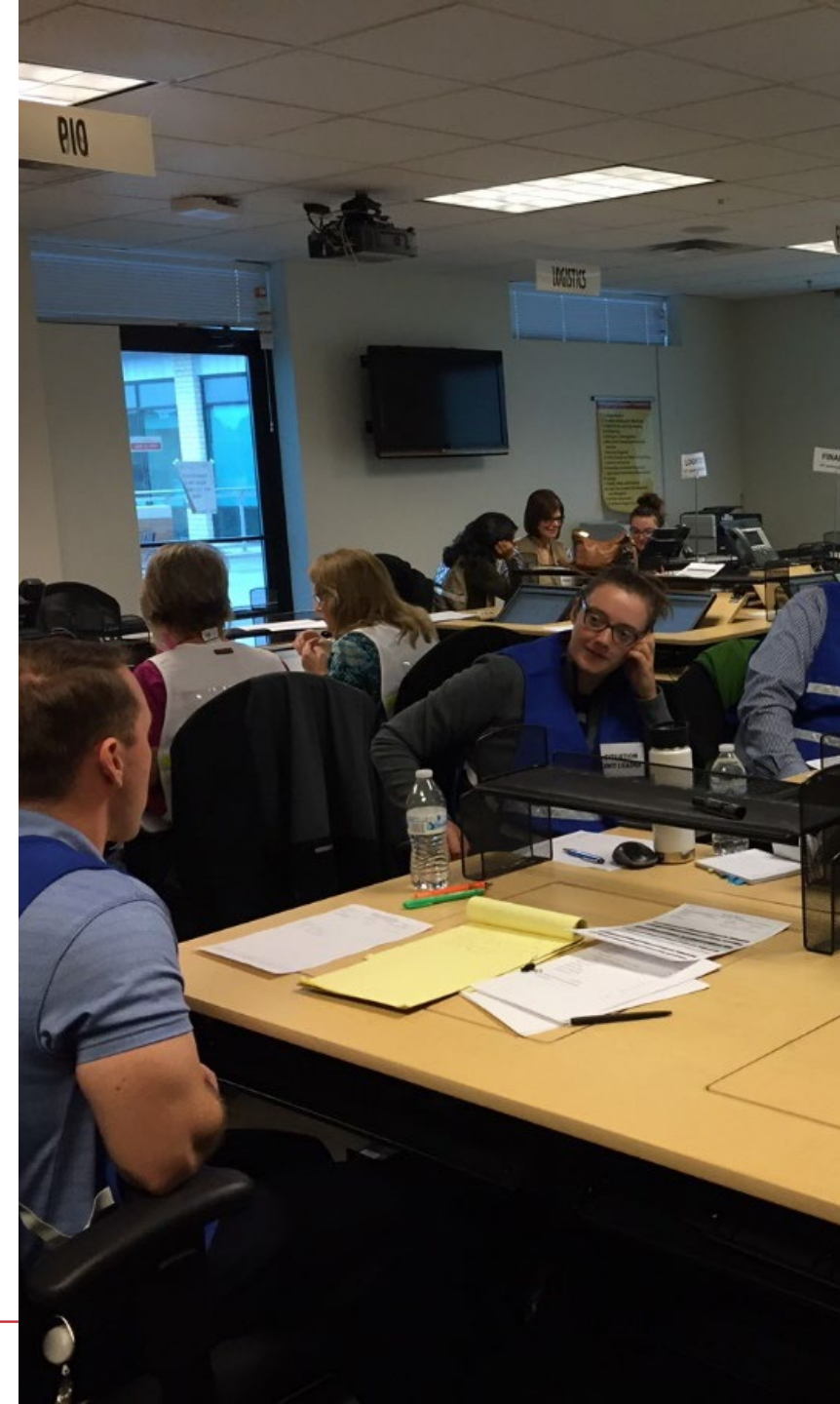
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Policy coordination with other government agencies and stakeholders

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# Recent EOC Activations

Veterans' Day Parade	(annually)
Santa Parade	(annually)
Pandemic	(2020-2021)
President Biden Visit	(2022)
Auburn Riverfront Apartment Fire	(2021)
Summer Heat Wave	(2021)
COVID-19	(2020)
Civil Unrest	(2020)
Snowmageddon	(2018)
Heritage Fire	(2017)





# 2025 CEMP Update Timeline

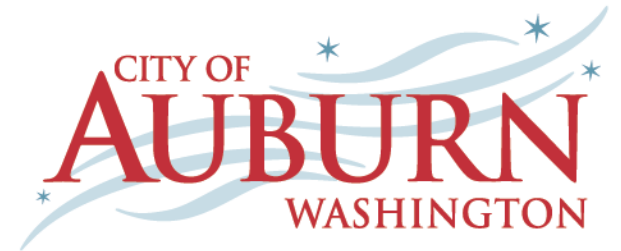
*NOTE: Due to COVID-19 the deadline for updated local CEMP plans was extended to December 31, 2025*

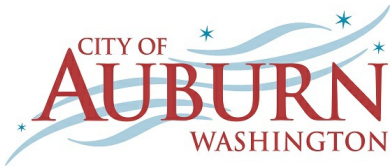
- Late fall/early winter 2024
  - Begin plan review
  - Identify working group for section updates
  - Set timelines for updates to plan
- January – August 2025
  - Coordinate plan updates with all departments
  - Coordinate with local, state and federal stakeholders for review
  - Edit, update and finalize plan
- Late fall/early winter 2025
  - Submit plan to Washington State Office of Emergency Management for approval
- Fall/winter 2025
  - Submit 2025 CEMP to City Council for approval



# Emergency Management & CEMP Briefing

[auburnwa.gov/disaster](http://auburnwa.gov/disaster)





## AGENDA BILL APPROVAL FORM

**Agenda Subject:**

Ordinance No. 6942 (Gaub) (5 Minutes)

**Date:**

May 24, 2024

**Department:**

Public Works

**Attachments:**

[Draft Ordinance No. 6942](#)

**Budget Impact:**

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

**Administrative Recommendation:**

For discussion only.

**Background for Motion:****Background Summary:**

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide service to persons or areas inside or outside of the City.

Zayo Group, LLC has applied for a new franchise agreement to continue to operate their existing fiber optic telecommunications facilities located in the public ways within the city limits as their current Franchise agreement is set to expire in the near future. Zayo provides telecommunications services that include telecommunications capacity and dark fiber, transmission of voice, data, or other electronic information, non-switched, dedicated and private line services, and high capacity fiber optic transmission services to firms, businesses, and institutions. The proposed agreement is consistent with the City's standard franchise agreement language.

A Public Hearing to consider this application and take public comment is scheduled before the City Council on June 17, 2024 in accordance with Auburn City Code 20.04.040.

**Reviewed by Council Committees:**

**Councilmember:** Tracy Taylor

**Staff:** Ingrid Gaub

**Meeting Date:** June 10, 2024

Item Number:

**ORDINANCE NO. 6942**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY, A FRANCHISE FOR WIRELINE TELECOMMUNICATIONS**

WHEREAS, Zayo Group, LLC (“Franchisee”) has applied for a non-exclusive Franchise for the right of entry, use, and occupation of certain public ways within the City of Auburn (“City”), expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those public ways; and

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

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

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

**Section 1. Definitions**

For the purpose of this agreement and the interpretation and enforcement thereof, definitions of words and phrases shall be in accordance with the definitions set forth in this Franchise and in Auburn City Code 20.02.020. If there is a conflict between any of the definitions set forth in this Franchise and the definitions set forth in Auburn City Code 20.02.020 (as it exists on the effective date of this Franchise per Section 5), the definitions in this Franchise shall govern to the extent of such conflict.

A. “ACC” means the Auburn City Code.

B. “Franchisee’s Facilities” means fiber optic and broadband communications infrastructure constructed and operated within the public ways, including but not limited to all cables, wires, conduits, ducts, poles, surface location markers, anchors, manholes, handholes, vaults, pedestals, splice boxes, appurtenances, and any associated converter equipment or other items necessary for the provisioning of Telecommunications Services, as defined in RCW 35.99.010(7), which are located in the Franchise Area.

Franchisee's Facilities does not include non-wireline infrastructure used to propagate the radio-frequency, microwave, or other over-the-air cellular signals that are necessary to provide personal wireless services, including antennas, radios, meters, or other related equipment, as well as antenna support structures, equipment cabinets or enclosures, attachments and related appurtenances associated with wireless telecommunications facilities. Franchisee's Facilities do not include small wireless facilities, microcell, minor facility, or small cell facilities, as defined in RCW 80.36.375. Franchisee's Facilities do not include any facilities that are not located within the Franchise Area or that are covered under a separate Franchise Agreement or agreement.

C. "Franchisee's Services" means any telecommunications service, telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities, including, but not limited to, the transmission of voice, data, or other electronic information, or other subsequently developed technology that carries a signal over fiber optic cable and associated infrastructure. Franchisee's Services may also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses, or institutions, and residential telecommunications service within the City, and other lawful services not prohibited by this Ordinance. However, Franchisee's Services will not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

**Section 2. Grant of Right to Use Franchise Area**

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

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

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

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise

Area, for any purpose that does not interfere with Franchisee's rights under this Franchise.

E. Except as explicitly set forth in this Agreement, this Franchise does not waive any rights that the City has or may acquire with respect to the Franchise Area or any other City roads, public ways, or property. Subject to and in accordance with all applicable laws, this Franchise will be subject to the power of eminent domain, and in any proceeding under eminent domain, the Franchisee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any public way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Franchisee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

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

H. The Franchisee agrees to provide the City with complete contact information for any client, lessee, sub-lessee, customer, or other entity who will use the Franchisee Facilities to provide services to their clients and customers either inside or outside the City limits and who either (1) has its facilities within the Franchisee Facilities, or (2) has authority to physically operate, control, or access Franchisee Facilities. Such contact information shall be provided to the City a minimum of sixty (60) days prior to the start of such anticipated use so that the City may determine if Franchisee's client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City prior to such use. If the client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City, then the Franchisee shall not allow use, control, access, or otherwise provide services to such entity until the required franchise agreement has been obtained.

1. If the Franchisee's client, lessee, sub-lessee, or other entity is only using Franchisee's bandwidth or capacity (whether lit or dark) and does not physically occupy space within the Franchisee Facilities, or have authority to physically operate, control, or access Franchisee Facilities, then Section 2.H. will not apply.

**Section 3. Notice**

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses unless a different address is designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the receiving party. Any communication made by e-mail or similar method will not constitute notice pursuant to this Agreement, except in case of emergency notification to the Franchisee. Emergency notification to the City shall be pursuant to Section 8.

City: Right-of-Way Specialist,  
Public Works Department - Transportation  
City of Auburn  
25 West Main Street  
Auburn, WA 98001-4998  
Telephone: (253) 931-3010  
rowusepermit@auburnwa.gov

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

Franchisee: Zayo Group, LLC  
Attn: Legal -- Underlying Rights  
1401 Wynkoop Street, Suite 500  
Denver, CO 80202  
legal@zayo.com  
Telephone: (866) 364-6033

with a copy to: Zayo Group, LLC  
Attn: Legal -- Underlying Rights  
1821 30th Street, Unit A  
Boulder, CO 80301  
legal@zayo.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this Agreement.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may

contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee:

Network Operations Center & Repair  
Zayo Group, LLC  
(888) 404 9296  
zayoncc@zayo.com

**Section 4. Term of Agreement**

A. This Franchise shall run for a period of fifteen (15) years, from the date of Franchise Acceptance as described in Section 5 of this Agreement.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise’s term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) days in advance of intent to cancel this Franchise.

**Section 5. Acceptance of Franchise**

A. This Franchise will not become effective until Franchisee files with the City Clerk (1) the Statement of Acceptance (Exhibit “A”), (2) all verifications of insurance coverage specified under Section 16, (3) the financial security specified in Section 17, and (4) payment of any outstanding application fees required in the City Fee Schedule. These four items will collectively be the “Franchise Acceptance”. The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise as described in Section 28 of this Agreement, the City’s grant of the Franchise will be null and void.

**Section 6. Construction and Maintenance**

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits required under applicable law for any work done within the City. Franchisee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

B. Franchisee agrees to coordinate its activities with the City and all other utilities located within the public way within which Franchisee is under taking its activity.

C. Subject to and in accordance with all applicable laws, the City expressly reserves the right to prescribe how and where Franchisee's Facilities will be installed within the public way and may require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Franchisee as provided for in Chapter 35.99 RCW, as well as Section 11 of this Agreement.

D. Before beginning any work within the public way, the Franchisee will comply with the One Number Locator provisions of Chapter 19.122 RCW to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the City.

## **Section 7. Repair and Restorations**

A. If the City Engineer determines that Franchisee Facilities or Franchisee's construction, maintenance, repair, relocation, or replacement of Franchisee Facilities within the Franchise Area is the cause of damage, degradation, failure, or substandard condition of a Street during the term of this Franchise the City will notify Franchisee in writing and Franchisee will repair or replace the subject Street in accordance with City Engineering Design and Construction Standards and subject to applicable permits, within ninety (90) calendar days of the City's notification unless granted additional time by the City Engineer. If the City determines the subject Street condition poses an immediate threat to health, safety, vital traffic operations, property, or critical areas, Section 8 shall apply.

B. For purposes of the Section, "Street" shall mean all City owned improvements within a public way, including, but is not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, and traffic control devices, landscape areas, and vegetation in unopened rights-of-way.



## **Section 8. Emergency Repair Work**

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences (unless advance notice is not practical), and in writing as soon thereafter as possible. Such notification shall include the Franchisee's emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City's actual cost of performing emergency response work, but only to the extent that the need to perform such work was caused by Franchisee or Franchisee Facilities, as determined by the City Engineer.

## **Section 9. Damages to City and Third-Party Property**

Subject to and in accordance with all applicable laws, Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee, under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning the property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). All repair work shall be performed and completed to the satisfaction of the City Engineer.

## **Section 10. Location Preference**

A. Any structure, equipment, appurtenance, or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed before another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference shall continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of

Franchisee's Facilities. Such relocations will be governed by Section 11 and Chapter 35.99 RCW.

B. When constructing new Franchisee Facilities, or replacing or reconstructing Franchisee Facilities, Franchisee shall maintain minimum underground separation requirements from all City water, sanitary sewer, and storm water facilities in accordance with the City Engineering Design and Construction Standards; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the Franchise Area, will develop and follow the City's determination of guidelines and procedures for determining specific utility locations, subject additionally to this Franchise Agreement.

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

A. Except as otherwise required by law, Franchisee agrees to adjust, protect-in-place, relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Pursuant to the provisions of Section 15, Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the public way.

B. If a readjustment or relocation of the Franchisee Facilities is necessitated by a request from a party other than the City, that party shall pay the Franchisee the actual costs associated with such relocation.

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

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

B. Franchisee may ask the City in writing to abandon, in whole or in part, all or any part of the Franchisee's Facilities. Any plan for abandonment of Franchisee Facilities must be approved in writing by the City.

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

### **Section 13. Undergrounding**

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

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

**Section 14. Franchisee Information**

A. Franchisee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's data base system, including the City's Geographic Information System (GIS) data base. Franchisee will keep the City informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City.

**Section 15. Indemnification and Hold Harmless**

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business related to this Franchise, or from any activity, work or thing done, or permitted by Franchisee arising from or in connection with this Franchise Agreement, except to the extent that such injury, loss, or damage has been occasioned by the sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence or willful misconduct of the City, or its agent performing, directing, or overseeing such work.

C. The Franchisee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. Pursuant to the terms of Section 15(A), the Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and the Franchisee will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

## **Section 16. Insurance**

A. The Franchisee shall procure and maintain for the duration of this Agreement and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the public way and the performance of the work hereunder by Franchisee, its agents, representatives, employees, or contractors.

B. No Limitation. The Franchisee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Franchisee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO endorsement CG 20 12 05 09 if the franchise agreement is considered a master permit as defined by RCW 35.99.010, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as ISO form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise Agreement covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain insurance that meets or exceeds the following limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000.

5. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate.

6. Franchisee may satisfy the basic coverage limits required by this Agreement through any combination of primary, excess, or umbrella insurance policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Agreement. The Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the

insurance requirements of this Agreement. Upon request by the City, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within ten business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Agreement.

K. City Full Availability of Franchisee Limits. If the Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise Agreement, Franchisee or its affiliated parent entity shall comply with the following: (i) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (ii) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (iii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in Section 15

## **Section 17. Financial Security**

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs,

compensation or indemnification of third parties, and the cost of removal or abandonment of Franchisee's Facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

**Section 18. Successors and Assignees**

A. All the provisions, conditions, regulations and requirements contained in this Franchise are binding upon the successors and assigns of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors and assignees equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

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

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

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

E. Work performed by independent contractors is subject to the same provisions, conditions, regulations, and requirements contained in this Franchise (including the requirements in Section 15 of this Franchise) as if the work were performed by Franchisee. Franchisee shall ensure that all such work is performed in compliance with this Franchise and all other applicable laws. It is Franchisee's responsibility to ensure that its contractors performing work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws



governing the work performed by them.

### **Section 19. Dispute Resolution**

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

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

### **Section 20. Enforcement and Remedies**

A. If the Franchisee willfully violates, or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or fails to comply with any notice given to Franchisee under the provisions of this agreement, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the financial guarantee set forth in Section 17 for every day after the expiration of the cure period that the breach is not cured.

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

## **Section 21. Compliance with Laws and Regulations**

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. The Franchisee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Franchisee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee, if the Franchisee fails to comply with such amendment or modification.

## **Section 22. License, Tax and Other Charges**

This Franchise will not exempt the Franchisee from any future license, tax, or charge which the City may adopt under authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

## **Section 23. Consequential Damages Limitation**

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

## **Section 24. Severability**

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

**Section 25. Titles**

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

**Section 26. Implementation**

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

**Section 27. Entire Agreement**

This Agreement, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All previous Agreements between the parties pertaining to Franchisee's operation of its Facilities are hereby superseded.

**Section 28. 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

\_\_\_\_\_  
Doug Ruth, Acting City Attorney

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

