



Agenda
City Council Regular Meeting
Tuesday, October 6, 2020 - 6:00 p.m.
Join the Zoom meeting [here](#)
Public Telephone Access: (206) 337-9723 or (253) 215-8782
Meeting ID No. 979 0686 1224

Pursuant to Resolution No. 100-20, this meeting will be conducted remotely via Zoom and broadcast live on CityView Channel 192 and at ci.richland.wa.us. If you wish to provide comments for the Public Hearing and/or Public Comments portion of the meeting, please register [here](#) by 4:00 p.m. on the day of the meeting. Only those who register by the 4:00 p.m. deadline will be permitted to speak or have their comments read into the record during the meeting. Written comments that exceed two minutes when read aloud may not be read in their entirety, but will be available in the record for Council review.

City Council Regular Meeting - 6:00 p.m.

Welcome and Roll Call

Pledge of Allegiance

Approval of Agenda: (Approved by Motion)

Resolution for Adoption:

1. Resolution No. 140-20, Confirming the Appointment of Marianne Boring as Interim Councilmember to Position No. 2 on the Richland City Council
 - City Council

Presentations:

2. Swearing-In of Interim Councilmember Marianne Boring to Position No. 2 on the Richland City Council
 - Cindy Reents, City Manager
3. Proclamation of Appreciation and Plaque for Former Councilmember Brad Anderson
 - Ryan Lukson, Mayor
4. Proclamations of Appreciation with Plaques to David Larkin, Kim Shugart and Douglas Sako
 - Ryan Lukson, Mayor
5. Tri-Cities Regional Hotel-Motel Commission Annual Budget and Marketing Plan
 - Michael Novakovich
6. 2021 City Manager's Preliminary Budget
 - Cindy Reents, City Manager

Public Hearing: Please limit public hearing comments to 3 minutes. Comments must speak only to the item for which the hearing is convened. Records intended for Council consideration must be given to the City Clerk.

7. Authorizing a Franchise Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, Ordinance No. 32-20
 - Heather Kintzley, City Attorney

8. Proposed Vacation of a Portion of Robertson Drive, Ordinance No. 33-20
 - Pete Rogalsky, Public Works Director
9. Relinquishment of a Portion of a Utility Easement at 1375 Kensington Way, Resolution No. 134-20
 - Clint Whitney, Energy Services Director
10. Relinquishment of a Portion of Utility Easements at 2705 Fermi Drive, Resolution No. 138-20
 - Pete Rogalsky, Public Works Director

Public Comments: Please limit public comments to 2 minutes. The public comment period is not an opportunity for dialogue with councilmembers, or for posing questions with the expectation of an immediate answer. Many questions require an opportunity for information-gathering and deliberation. For this reason, Council will accept comments, but will not directly respond to comments, questions or concerns during public comment. Records intended for Council consideration must be given to the City Clerk.

Consent Calendar: Approved by single vote; Councilmembers may transfer individual items to Items of Business for deliberation before voting.

Minutes:

11. Approval of the following Richland City Council Meeting Minutes:
 - September 8, 2020 City Council Special Workshop
 - September 14, 2020 City Council Special Workshop
 - September 15, 2020 Regular City Council Meeting
 - September 22, 2020 City Council Special Workshop
 - September 25, 2020 City Council Special Meeting
 - Heather Kintzley, City Attorney

Ordinances - First Reading:

12. Ordinance No. 32-20, Authorizing a Franchise Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility
 - Heather Kintzley, City Attorney
13. Ordinance No. 33-20, Authorizing the Vacation of a Portion of Robertson Drive
 - Pete Rogalsky, Public Works Director
14. Ordinance No. 34-20, Amending Chapter 12.02 of the Richland Municipal Code related to the Street Functional Classification Plan
 - Pete Rogalsky, Public Works Director

Ordinances - Second Reading & Passage:

15. Ordinance No. 29-20, Amending Richland Municipal Code Title 9: Crime
 - Heather Kintzley, City Attorney
16. Ordinance No. 30-20, Amending Richland Municipal Code Section 12.04.100 related to Driveways in the Industrial Districts
 - Pete Rogalsky, Public Works Director

17. Ordinance No. 31-20, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transport
- Heather Kintzley, City Attorney.

Resolutions - Adoption:

18. Resolution No. 134-20, Authorizing Relinquishment of a Portion of a Utility Easement at 1375 Kensington Way
- Clint Whitney, Energy Services Director
19. Resolution No. 135-20, Approving the 2021 Shoreline Master Program Periodic Review Public Participation and Work Plan
- Kerwin Jensen, Development Services Director
20. Resolution No. 136-20, Setting a Date for a Public Hearing to Consider the Zinsli Annexation Petition
- Kerwin Jensen, Development Services Director
21. Resolution No. 137-20, Renewing the Temporary Waiver Authority Granted by Resolution No. 102-20
- Kerwin Jensen, Development Services Director
22. Resolution No. 138-20, Authorizing Relinquishment of a Portion of Utility Easements at 2705 Fermi Drive
- Pete Rogalsky, Public Works Director
23. Resolution No. 141-20, Authorizing Utilization of Coronavirus Aid, Relief, and Economic Security (CARES) Act Funds to provide Utility Billing Relief
- Cathleen Koch, Administrative Services Director

Items - Approval:

24. Appointments to the Board of Adjustment: Brad Bricker and Michael Simpson
- Heather Kintzley, City Attorney.

Expenditures - Approval:

Items of Business:

25. Ordinance No. 36-20, Amending Title 23 and the Official Zoning Map to Change Zoning on 7.4 Acres from Retail Business (C-2) to Limited Business (C-LB) (closed record)
- Kerwin Jensen, Development Services Director
26. Consulting Services for City Manager Annual Evaluation Process
- Ryan Lukson, Mayor

Reports and Comments:

1. City Manager
2. City Council
3. Mayor

Executive Session:

27. Executive Session Per RCW 42.30.110(1)(b): Discuss Lease or Purchase of Real Estate if Disclosure Would Increase Price (15 minutes)
 - Kerwin Jensen, Development Services Director

Adjournment

City Council meetings are broadcast live on CityView Channel 192 and online at ci.richland.wa.us

Richland City Hall is ADA accessible. Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 942-7389.



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolution for Adoption

Key I - Financial Stability & Operational Effectiveness

Subject:

Resolution No. 140-20, Confirming the Appointment of Marianne Boring as Interim Councilmember to Position No. 2 on the Richland City Council

Department:
City Manager

Ordinance/Resolution Number:
140-20

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 140-20, confirming Marianne Boring's appointment to serve as interim councilmember in Position No. 2 on the Richland City Council.

Summary:

On August 18, 2020, Councilmember Brad Anderson announced his resignation from Position No. 2 on the Richland City Council. The Richland City Charter provides that a vacancy in the Council shall be filled by a duly elected candidate during the next regular general election following the occurrence of the vacancy, and that the City Council, by majority vote, shall appoint someone to serve as an interim councilmember until the general election is held.

Council promptly sought applications from interested citizens to fill the vacancy left by Councilmember Anderson. 35 applications were received, with 33 determined to be eligible pursuant to the Richland City Charter.

On September 25, 2020, Council interviewed three applicants and voted to appoint Marianne Boring to serve as interim councilmember in Position No. 2. Resolution No. 140-20 confirms Richland City Council's appointment.

Per Article II, Section 2.04 of the Richland City Charter, an interim councilmember's appointment to the Richland City Council is effective from the date of appointment until the duly elected successor takes office at the first meeting, regular or special, after the 2021 general election has been certified.

Marianne Boring's interim appointment to Position No. 2 of the Richland City Council is effective with her swearing-in on October 6, 2020.

Fiscal Impact:

None.

Attachments:

- I. Resolution No. 140-20

RESOLUTION NO. 140-20

A RESOLUTION of the City of Richland confirming the appointment of Marianne Boring as interim councilmember in Position No. 2 on the Richland City Council.

WHEREAS, effective August 18, 2020, Councilmember Brad Anderson resigned from the Richland City Council, thereby creating a vacancy in Position No. 2; and

WHEREAS, Richland City Council sought applications from qualified individuals interested in serving as interim councilmember in Position No. 2 until the first regular or special meeting after the 2021 general election is certified; and

WHEREAS, of the 35 applications received, 33 applicants were certified by the City Clerk's Office as eligible for consideration consistent with Article II, Section 2.02 of the Richland City Charter; and

WHEREAS, Richland City Council convened on September 18, 2020 to discuss the candidates for appointment to elected office, after which Council announced in an open public meeting its three (3) preferred candidates to interview; and

WHEREAS, on September 25, 2020, Richland City Council interviewed the three (3) candidates in a duly noticed open public meeting; and

WHEREAS, at the conclusion of the interviews, Richland City Council voted unanimously to appoint Marianne Boring to serve as interim councilmember in Position No. 2 until a duly elected successor is determined by the 2021 General Election.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Richland as follows:

Section 1. The appointment of Marianne Boring as interim councilmember to Position No. 2, as made by unanimous vote of the Richland City Council on September 25, 2020, is hereby confirmed.

Section 2. The appointment of Marianne Boring is effective October 6, 2020 upon her swearing in, and will continue until a duly elected successor as determined by the 2021 General Election takes office for the unexpired term of Position No. 2 on the Richland City Council, or in the absence of a duly elected successor, until Richland City Council makes a subsequent appointment to Position No. 2.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

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ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Presentations

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Swearing-In of Interim Councilmember Marianne Boring to Position No. 2 on the Richland City Council

Department:
City Manager

Ordinance/Resolution Number:

Document Type:
Presentation

Recommended Motion:

None.

Summary:

Council conducted interviews on September 25, 2020, and voted unanimously to appoint Marianne Boring as interim councilmember to Position No. 2 on the Richland City Council until a successor takes office after the 2021 General Election.

Fiscal Impact:

None.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Presentations

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Proclamation of Appreciation and Plaque for Former Councilmember Brad Anderson

Department:

City Council

Ordinance/Resolution Number:

Document Type:

Presentation

Recommended Motion:

None.

Summary:

Mayor Lukson will present a Proclamation of Appreciation and plaque to former Councilmember Brad Anderson for his years of service on the Richland City Council.

Fiscal Impact:

Attachments:

I. Anderson Proclamation



Proclamation

WHEREAS, Mr. Brad Anderson was appointed to the Richland City Council in January 2012 after serving more than four years on the Richland Parks & Recreation Commission, and was subsequently re-elected by Richland citizens for two consecutive terms; and

WHEREAS, during his tenure as a councilmember, which ended on August 18, 2020, Mr. Anderson diligently served the citizens of Richland through numerous council appointments, concluding serving as liaison to the following: Arts Commission, Economic Development Committee, Code Enforcement Board, Lodging Tax Advisory Committee, Parks & Recreation Commission, Utility Advisory Committee; Benton County Mosquito Control Board, Port of Benton, Port of Kennewick, Benton County Solid Waste Advisory Committee, Tri-City Regional Chamber of Commerce, Benton-Franklin Community Action Committee, Benton-Franklin Walla Walla Good Roads & Transportation Association, and the Washington State Good Roads Association; and

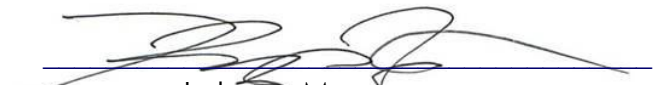
WHEREAS, as a councilmember, Mr. Anderson was a champion of liberty, individual rights and personal responsibility, and his dedication to these concepts is evident in actions taken by him on behalf of the citizens and visitors of the city; and

WHEREAS, Mr. Anderson worked tirelessly with City leadership to ensure the success of the Duportail Bridge, construction of a new Richland City Hall, preservation and enhancement of numerous city parks, and the development of a thriving waterfront district; and

WHEREAS, Mr. Anderson led with integrity, passion and authenticity.

NOW, THEREFORE, I, Ryan Lukson, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby extend to Mr. Brad Anderson and his family, this expression of appreciation for his service and dedication to the City of Richland. This Proclamation is delivered to Mr. Anderson with the City's best wishes in all future endeavors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington, on this 6th day of October, 2020.


Lukson, Mayor



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Presentations

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Proclamations of Appreciation with Plaques to David Larkin, Kim Shugart and Douglas Sako

Department:

City Council

Ordinance/Resolution Number:

Document Type:

Presentation

Recommended Motion:

None.

Summary:

Mayor Lukson will present a proclamation of appreciation with plaques to the following committee members for their years of service:

Mr. David Larkin - Utility Advisory Committee

Ms. Kim Shugart - Lodging Tax Advisory Committee

Mr. Douglas Sako - Economic Development Committee

Fiscal Impact:

None.

Attachments:

1. Larkin Proclamation
2. Shugart Proclamation
3. Sako Proclamation



Proclamation

WHEREAS, David Larkin was appointed to the Utility Advisory Committee in 2005 and served fifteen (15) years until September of 2020; and

WHEREAS, during his tenure, Mr. Larkin faithfully dedicated his time, knowledge and talents for the benefit of the citizens of Richland; and

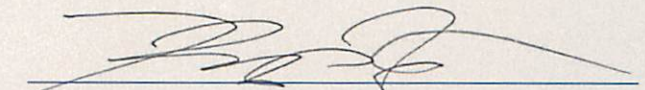
WHEREAS, Mr. Larkin lead the Utility Advisory Committee mostly recently as chairman in 2015, and as vice-chairman in 2014.

NOW, THEREFORE, I, Ryan Lukson, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby extend to David Larkin this expression of appreciation for his service on the Utility Advisory Committee.

FURTHER BE IT RESOLVED that this Proclamation shall be delivered to David Larkin with the City's best wishes in all future endeavors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington, on this 6th day of October, 2020.




Ryan Lukson, Mayor



Proclamation

WHEREAS, Kim Shugart was first appointed to the Lodging Tax Advisory Committee in 2008 and served twelve (12) years until September of 2020; and

WHEREAS, during her tenure, Ms. Shugart faithfully dedicated her time, knowledge and talents for the benefit of the citizens of Richland; and

WHEREAS, throughout Ms. Shugart's tenure on the Lodging Tax Advisory Committee, she shared her extensive knowledge and expertise as a local business owner, and later as a representative from Visit Tri-Cities; and

WHEREAS, Ms. Shugart has been invaluable in the successful distribution of hotel-motel funds; and

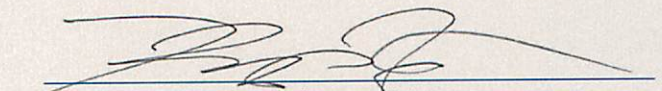
WHEREAS, Ms. Shugart maintains her commitment to the promotion of tourism in our community.

NOW, THEREFORE, I, Ryan Lukson, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby extend to Kim Shugart this expression of appreciation for her service on the Lodging Tax Advisory Committee.

FURTHER BE IT RESOLVED that this Proclamation shall be delivered to Kim Shugart with the City's best wishes in all future endeavors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington, on this 6th day of October, 2020.




Ryan Lukson, Mayor



Proclamation

WHEREAS, Douglas Sako was first appointed to the Economic Development Committee in January of 2006 and served fourteen (14) years until September of 2020; and

WHEREAS, during his tenure, Mr. Sako faithfully dedicated his time, knowledge and talents for the benefit of the citizens of Richland; and

WHEREAS, throughout the duration of his service, Mr. Sako faithfully executed the duties of a Richland Economic Development Committee member, including serving as chairman and vice-chairman; and

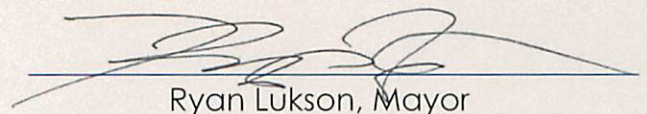
WHEREAS, Mr. Sako's contributions to and support of the City's vision for a vibrant downtown business district was evident through his consistent leadership and support of City initiatives, and his advocacy for small business; and

WHEREAS, as a long-time Richland resident and business owner in The Uptown, Mr. Sako willingly shared his extensive historical knowledge and unique Richland point of view for the benefit of economic development programs throughout the City.

NOW, THEREFORE, I, Ryan Lukson, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby extend to Douglas Sako this expression of appreciation for his service on the Economic Development Committee.

FURTHER BE IT RESOLVED that this Proclamation shall be delivered to Douglas Sako with the City's best wishes for all future endeavors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington, on this 6th day of October, 2020.



Ryan Lukson, Mayor





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Presentations

Core Focus Area 3 - Increase Economic Vitality

Subject:

Tri-Cities Regional Hotel-Motel Commission Annual Budget and Marketing Plan

Department:

City Manager

Ordinance/Resolution Number:

Document Type:

Presentation

Recommended Motion:

None.

Summary:

Please see Resolution No. 139-20 for more information.

Fiscal Impact:

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Presentations

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

2021 City Manager's Preliminary Budget

Department:
City Manager

Ordinance/Resolution Number:

Document Type:
Presentation

Recommended Motion:

None.

Summary:

As part of the budget process, an overview of the 2021 preliminary budget will be presented to the Council by the City Manager. The preliminary budget document will also be transmitted in accordance with RCW 35.33.135 by the first Monday in October or October 5, 2020. The remaining 2021 budget calendar is tentatively scheduled as follows:

October 20 Council Meeting:

- Public Hearing – Revenue Sources, including Property Taxes
- 1st Reading of Ordinances to Approve the Ad Valorem and Property Tax Levies for 2021

October 15 Budget Presentation/Hearing (formally known as the Town Hall Meeting)

November 3 Council Meeting:

- Public Hearing – Proposed 2021 Budget
- 1st Reading of Ordinance to Approve the 2021 Budget
- 2nd Reading and Passage of Ordinances to Approve the Ad Valorem and Property Tax Levies

November 17 Council Meeting:

- 2nd Reading and Passage of Ordinance to Approve the 2021 Budget

Fiscal Impact:

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Public Hearing

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Authorizing a Franchise Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, Ordinance No. 32-20

Department:

City Attorney

Ordinance/Resolution Number:

Document Type:

Public Hearing Item

Recommended Motion:

None.

Summary:

RMC 28.04.020 requires a public hearing before Council may grant a franchise (also known as a master permit) to a telecommunications company. New Cingular Wireless PCS, LLC d/b/a AT&T Mobility is seeking a franchise agreement to provide small cell technology in the City's rights-of-way.

See the staff report with Ordinance No. 32-20 on tonight's agenda for more information.

Fiscal Impact:

None.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Public Hearing

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Proposed Vacation of a Portion of Robertson Drive, Ordinance No. 33-20

Department:
Public Works

Ordinance/Resolution Number:

Document Type:
Public Hearing Item

Recommended Motion:

None.

Summary:

The City is seeking to vacate a section of Robertson Drive right-of-way between Henderson Loop and Snyder Street that is no longer needed for municipal purposes. Easements for public infrastructure will be drafted and recorded to protect utilities that remain in the proposed vacated right-of-way.

State law requires that a public hearing be held to solicit testimony related to the vacation request.

Please see the staff report related to Ordinance No. 33-20 on tonight's agenda for more information.

Fiscal Impact:

None.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Public Hearing

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Relinquishment of a Portion of a Utility Easement at 1375 Kensington Way, Resolution No. 134-20

Department:

Energy Services

Ordinance/Resolution Number:

Document Type:

Public Hearing Item

Recommended Motion:

None.

Summary:

A request has been received by the City to vacate a portion of a utility easement at 1375 Kensington Way. State law requires a public hearing prior to the surplus of property acquired for utility purposes.

Please see the staff report for Resolution No. 134-20 on tonight's agenda for more information.

Fiscal Impact:

None.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Public Hearing

Subject:

Relinquishment of a Portion of Utility Easements at 2705 Fermi Drive, Resolution No. 138-20

Department:

Public Works

Ordinance/Resolution Number:

Document Type:

Public Hearing Item

Recommended Motion:

None.

Summary:

A request has been received by the City to vacate certain portions of utility easements at 2705 Fermi Drive. State law requires a public hearing prior to the surplus of property acquired for utility purposes.

Please see the staff report for Resolution No. 138-20 on tonight's agenda for more information.

Fiscal Impact:

None.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Minutes

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Approval of the following Richland City Council Meeting Minutes:

- September 8, 2020 City Council Special Workshop
- September 14, 2020 City Council Special Workshop
- September 15, 2020 Regular City Council Meeting
- September 22, 2020 City Council Special Workshop
- September 25, 2020 City Council Special Meeting

Department:

City Attorney

Ordinance/Resolution Number:

Document Type:

Minutes

Recommended Motion:

Approve the minutes of meetings held on: September 8, 2020; September 14, 2020; September 15, 2020; September 22, 2020 and September 25, 2020.

Summary:

Draft meeting minutes from the following Richland City Council meetings are presented for Council's consideration and approval:

- September 8, 2020 City Council Special Workshop
- September 14, 2020 City Council Special Workshop
- September 15, 2020 Regular Council Meeting
- September 22, 2020 City Council Special Workshop
- September 25, 2020 City Council Special Meeting

Fiscal Impact:

None.

Attachments:

1. Draft September 8, 2020 City Council Special Workshop Minutes
2. Draft September 14, 2020 City Council Special Workshop Minutes
3. Draft September 15, 2020 Regular City Council Meeting Minutes
4. Draft September 22, 2020 City Council Special Workshop Meeting Minutes
5. Draft September 25, 2020 City Council Special Meeting Minutes



MINUTES
RICHLAND CITY COUNCIL SPECIAL WORKSHOP MEETING
Monday, September 8, 2020 - 5:00 p.m.
Public Telephone Access: (509) 942-7698

City Council Special Workshop - 5:00 p.m.

Mayor Lukson called the City Council Special Workshop to order at 5:00 p.m.

Attendance: Mayor Lukson, Mayor Pro Tem Kent and Councilmembers Alvarez, Christensen, Lemley and Thompson were present.

Also attending remotely were City Manager Reents, Assistant City Manager Amundson, Chief of Police Bruce, Fire & Emergency Services Director Huntington, and Fire Battalion Chief Hempstead.

Agenda Items

1. Public Safety Budget Review
 - John Bruce, Chief of Police
 - Tom Huntington, Fire & Emergency Services Director

Staff provided a high-level overview of each department's current projects, programs and developments, as well as major initiatives for 2021.

Adjournment

Mayor Lukson adjourned the meeting at 7:00 p.m.

APPROVED:

ATTEST:

Ryan Lukson, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



MINUTES
RICHLAND CITY COUNCIL SPECIAL WORKSHOP MEETING
Monday, September 14, 2020 - 5:00 p.m.
Zoom - Public Telephone Access: (253) 215-8782 or (206) 337-9723
Meeting ID No. 970 4147 6429

City Council Special Workshop - 5:00 p.m.

Mayor Lukson called the City Council Special Workshop to order at 5:00 p.m.

Attendance: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez, Christensen and Lemley were present. Councilmember Thompson was absent.

Also attending remotely were City Manager Reents, Assistant City Manager Amundson, Administrative Services Director Koch, Parks & Public Facilities Director Schiessl, and Development Services Director Jensen.

Agenda Items

1. Economic Development and Parks & Public Facilities Budget Review
 - Kerwin Jensen, Development Services Director
 - Joe Schiessl, Parks & Public Facilities Director

Staff provided a high-level overview of each department's current projects, programs and developments, as well as major initiatives for 2021. PowerPoint presentations were provided.

Adjournment

Mayor Lukson adjourned the meeting at 6:42 p.m.

APPROVED:

Ryan Lukson, Mayor

ATTEST:

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



MINUTES

RICHLAND CITY COUNCIL REGULAR MEETING

Tuesday, September 15, 2020 - 6:00 p.m.

Zoom- Public Telephone Access: (206) 337-9723

Meeting ID No. 946 0040 8440

City Council Regular Meeting - 6:00 p.m.

Mayor Lukson called the Council meeting to order at 6:00 p.m.

Welcome and Roll Call

Mayor Lukson welcomed those attending the virtual meeting.

Attendance: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez, Christensen, Lemley and Thompson were present.

Also remotely present were City Manager Reents, Assistant City Manager Amundson, City Attorney Kintzley, Chief of Police Bruce, Fire & Emergency Services Director Huntington, Development Services Director Jensen, Administrative Services Director Koch, Public Works Director Rogalsky, Parks & Public Facilities Director Schiessl, Energy Services Director Whitney and City Clerk Rogers.

Pledge of Allegiance

Mayor Lukson led the Council and audience in the recitation of the Pledge of Allegiance.

Approval of Agenda

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED THE MOTION TO APPROVE THE AGENDA AS PUBLISHED. THE MOTION CARRIED 6-0.

Presentations

1. COVID-19 Update

City Manager Reents provided a COVID-19 update relating to school openings, declining COVID-19 cases in Benton County, COVID-19 vaccination, and the under-utilization of testing sites. City Manager Reents added that the Benton-Franklin Health District and local hospital officials are encouraging everyone to get a flu shot, continue social distancing and wear face coverings.

City Manager Reents further discussed how wildfires in California, Oregon and Washington have contributed to poor air quality, and has temporarily closed COVID-19 testing sites and other activities. Labor & Industries (L&I) has postponed electrical inspections until further notice, which affects the City's ability to process certificates of occupancy for homeowners and businesses.

Fire & Emergency Services Director Huntington provided an update on the regional wildfires and their effect on local air quality.

Councilmember Lemley inquired if flu shots have been scheduled for the City of Richland. City Manager Reents replied that this activity is typically scheduled for October, and added that notification will be provided once a date is established.

Public Hearing

City Clerk Rogers read the Public Hearing and Public Comments procedures.

2. Relinquishment of Easements at 650 George Washington Way, Resolution No. 124-20

State law requires a public hearing to solicit testimony before relinquishment of property acquired for utility purposes. Public Works Director Rogalsky provided an overview of this basis behind this relinquishment request.

Mayor Lukson opened and closed the public hearing at 6:18 p.m. No testimony was offered.

Mayor Lukson stated commented favorably on the project at 650 George Washington Way, including the fact that it is scheduled to be completed in November.

Public Comments

City Clerk Rogers read aloud the public comments received electronically:

Laila Krowiak - 1523 Hains, Richland, WA: Ms. Krowiak stated concerns with current speed limits and parking on Hains Avenue. Ms. Krowiak questioned if traffic calming solutions will be implemented on Hains Avenue if parking on both sides of the street is eliminated.

Francesca Maier - 2146 Hudson Ave., Richland, WA: Ms. Maier expressed disappointment concerning the City's lack of response to residents' safety concerns on Hains Avenue.

Joel Rogo - 21 Aaron Drive, Richland, WA: Mr. Rogo thanked Mayor Lukson, the Municipal Advisory Committee, Stephanie Swanberg of the Tri-Cities Regional Chamber of Commerce, and the Tri-Cities Fitness Coalition for their successful efforts in reopening fitness centers and dance studios.

The following individual provided telephonic comments:

Dori Luzzo-Gilmour - 2051 Howell Ave., Richland, WA: Ms. Luzzo Gilmour inquired about Resolution No. 133-20, which authorized a maintenance agreement with Friends

of Badger Mountain. Ms. Luzzo-Gilmour questioned why a maintenance agreement was being pursued instead of a park partnership agreement.

Consent Calendar

MAYOR LUKSON PULLED RESOLUTION NO. 133-20, AUTHORIZING A MAINTENANCE AGREEMENT WITH FRIENDS OF BADGER MOUNTAIN (ITEM NO. 12). ITEM NO. 12 WAS RELOCATED TO ITEM OF BUSINESS NO. 2 ON THE AGENDA.

City Clerk Rogers read the Consent Calendar.

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED THE MOTION TO APPROVE THE CONSENT AGENDA AS AMENDED. THOSE IN FAVOR: MAYOR LUKSON, MAYOR PRO TEM KENT, AND COUNCILMEMBERS ALVAREZ, CHRISTENSEN, LEMLEY AND THOMPSON. THOSE OPPOSED: NONE. THE MOTION CARRIED 6-0.

Minutes

3. Approval of the September 1, 2020 City Council Regular Meeting Minutes

Ordinances - First Reading

4. Ordinance No. 29-20, Amending Richland Municipal Code Title 9: Crime
5. Ordinance No. 30-20, Amending Richland Municipal Code Section 12.04.100 related to Driveways in the Industrial Districts
6. Ordinance No. 31-20, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transport

Ordinances - Second Reading & Passage

7. Ordinance No. 27-20, Amending the 2020 Budget in the General Fund
8. Ordinance No. 28-20, Amending Richland Municipal Code Section 12.08.020 relating to Right-of-Way Construction Permits

Resolutions - Adoption

9. Resolution No. 124-20, Relinquishing Utility Easements at 650 George Washington Way
10. Resolution No. 131-20, Authorizing a Grant Application to the U.S. Economic Development Administration for Sewer Infrastructure into North Horn Rapids

11. Resolution No. 132-20, Awarding Bid to Booth & Sons Construction, Inc. for Phase One of the Neighborhood Signage and Gateway Entrance Signage Project
12. Resolution No. 133-20, Authorizing a Maintenance Agreement with Friends of Badger Mountain **(RELOCATED TO ITEMS OF BUSINESS AS ITEM NO. 2)**

Items - Approval

13. Appointment to the Personnel Committee: Steve Lorence
14. Appointments to the Economic Development Committee: Brad Bricker, Ken Spencer, Theresa Richardson and Kim Knight
15. Appointment to the Library Board: Lindsay Lightner
16. Appointments to the Americans with Disabilities Citizens Review Committee: Michele Levenite and Deborah Titus
17. Appointments to the Lodging Tax Advisory Committee: Lara Watkins and Andrew Lucero-Montano

Expenditures - Approval

18. Expenditures from August 1, 2020 to August 31, 2020 for \$28,384,167.33 including Check Nos. 281796-282648, Wire Nos. 8228-8266, Payroll Check Nos. 168066-169109, Payroll Wire/ACH Nos. 11636-11679, and Pension Check Nos. 5568-5596

Items of Business

1. Ordinance No. 21-20, Amending Richland Municipal Code Section 11.40.030 related to Parking Prohibited on Certain Streets

Public Works Director Rogalsky presented on this ordinance, then engaged in a question and answer session with Council.

COUNCILMEMBER LEMLEY MOVED AND COUNCILMEMBER THOMPSON SECONDED THE MOTION TO ADOPT ORDINANCE NO. 21-20. THOSE IN FAVOR: MAYOR LUKSON, MAYOR PRO TEM KENT, AND COUNCILMEMBERS ALVAREZ, CHRISTENSEN, LEMLEY AND THOMPSON. THOSE OPPOSED: NONE. THE MOTION CARRIED 6-0.

2. Resolution No. 133-20, Authorizing a Maintenance Agreement with Friends of Badger Mountain **(ITEM NO. 12 PULLED FROM CONSENT CALENDAR)**

Parks & Public Facilities Director Schiessl provided an overview of the partnership and

agreement with FOBM and responded to questions asked by Ms. Luzzo-Gilmour during public comments.

Mr. Schiessl added that Resolution No. 133-20 memorializes a maintenance agreement with FOBM to maintain existing trails, and sets up future trails in Little Badger Mountain.

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER ALVAREZ SECONDED THE MOTION TO APPROVE RESOLUTION NO. 133-20. THE MOTION CARRIED 6-0.

Reports and Comments

City Manager

City Manager Reents had no comments.

City Council

Councilmember Alvarez encouraged everyone to get a flu shot. Councilmember Alvarez shared that longstanding local business has permanently closed its doors because of the COVID-19 pandemic. He encouraged everyone to stay healthy and remain hopeful that more businesses can reopen.

Mayor Pro Tem Kent encouraged everyone who was not selected for appointment to a board, commission or committee to reapply when a vacancy is published. Mayor Pro Tem Kent also shared that she recently participated in a remote meeting with a local Girl Scouts troops. She added that she was impressed with the Girl Scout members and the troop leaders who have continued to engage the youth throughout the COVID-19 pandemic.

Mayor

Mayor Lukson agreed that the City's boards, commissions and committees are comprised of great people whose participation makes it possible for the City to accomplish great things.

Mr. Lukson then spoke of the declining number of COVID cases, which should lead to the reopening of schools in October.

Executive Session

1. Executive Session Per RCW 42.30.110(1)(I): Discuss Current or Potential Litigation with Retained Legal Counsel

MAYOR LUKSON MOVED AND MAYOR PRO TEM KENT SECONDED THE MOTION TO ENTER EXECUTIVE SESSION AT 7:00 P.M. TO DISCUSS CURRENT OR

POTENTIAL LITIGATION WITH RETAINED COUNSEL FOR 20 MINUTES. THE MOTION CARRIED 6-0.

Present for the executive session included Mayor Lukson, Mayor Pro Tem Kent, Councilmembers Alvarez, Christensen, Lemley and Thompson, and retained counsel Ann Marie Soto.

COUNCIL EXTENDED THE EXECUTIVE SESSION BY 15 MINUTES AT 7:21 P.M.

MAYOR LUKSON MOVED AND COUNCILMEMBER THOMPSON SECONDED THE MOTION TO EXIT EXECUTIVE SESSION AT 7:36 P.M. THE MOTION CARRIED 6-0.

2. Executive Session Per RCW 42.30.110(1)(h): To evaluate the qualifications of a candidate for appointment to elective office.

COUNCIL MOVED INTO EXECUTIVE SESSION TO EVALUATE QUALIFICATIONS OF CANDIDATES FOR APPOINTMENTS TO ELECTIVE OFFICE FOR 60 MINUTES AT 7:52 P.M.

Present for the executive session included Mayor Lukson, Mayor Pro Tem Kent, Councilmembers Alvarez, Christensen, Lemley and Thompson, and City Manager Reents.

COUNCIL EXITED THE EXECUTIVE SESSION AT 8:52 P.M.

Mayor Lukson announced the three applicants selected to interview for Position No. 2 on the Richland City Council: Marianne Boring, Theresa Richardson and Maria Gutierrez.

Adjournment

Mayor Lukson adjourned the meeting at 8:53 p.m.

APPROVED:

ATTEST:

Ryan Lukson, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



MINUTES
RICHLAND CITY COUNCIL SPECIAL WORKSHOP MEETING
Monday, September 22, 2020 - 5:00 p.m.
Zoom - Public Telephone Access: (206) 337-9723 or (253) 215-8782
Meeting ID No. 961 0489 0760

City Council Special Workshop - 5:00 p.m.

Mayor Lukson called the City Council Special Workshop to order at 5:03 p.m.

Attendance: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez and Lemley were present. Councilmembers Christensen and Thomson were absent.

Also attending remotely were City Manager Reents, Assistant City Manager Amundson, Administrative Services Director Koch, Public Works Director Rogalsky, and Energy Services Director Whitney.

Agenda Items

1. Utilities and Capital Improvement Plan (CIP) Budget Review
 - Pete Rogalsky, Public Works Director
 - Clint Whitney, Energy Services Director
 - Cathleen Koch, Administrative Services Director

Staff provided a high-level overview of each department's current projects, programs and developments, as well as major initiatives for 2021. PowerPoint presentations were provided.

Adjournment

Mayor Lukson adjourned the meeting at 6:39 p.m.

APPROVED:

ATTEST:

Ryan Lukson, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



MINUTES

RICHLAND CITY COUNCIL SPECIAL MEETING

Friday, September 25, 2020 - 9:00 A.M.

Zoom - Public Telephone Access: (253) 215-8782 or (206) 337-9723

Meeting ID No. 958 2606 7883

City Council Special Meeting - 9:00 a.m.

Mayor Lukson called the Special meeting to order at 9:00 a.m.

Attendance: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez, Christensen, Lemley and Thompson were present.

Also attending remotely were City Manager Reents, Assistant City Manager Amundson and City Clerk Rogers.

Agenda Items

1. Interviews for Position No. 2 on the Richland City Council

City Council interviewed Marianne Boring, Theresa Richardson and Maria Gutierrez for the vacant position on the Richland City Council.

Executive Session

2. Executive Session Per RCW 42.30.110 (1)(h): To evaluate the qualifications of a candidate for appointment to elective office.

MAYOR LUKSON MOVED AND COUNCILMEMBER ALVAREZ SECONDED THE MOTION TO ENTER EXECUTIVE SESSION AT 10:30 A.M. TO EVALUATE THE QUALIFICATIONS OF A CANDIDATE FOR APPOINTMENT TO ELECTIVE OFFICE FOR 30 MINUTES. THE MOTION CARRIED 6-0.

Individuals present during executive session included: Mayor Lukson, Mayor Pro Tem Kent, Councilmembers Alvarez, Christensen, Lemley and Thompson, City Manager Reents and Assistant City Manager Amundson.

MAYOR LUKSON RETURNED TO THE VIRTUAL MEETING AT 11:00 A.M. TO ANNOUNCE THAT EXECUTIVE SESSION WAS EXTENDED FOR AN ADDITIONAL 15 MINUTES.

MAYOR LUKSON RETURNED TO THE VIRTUAL MEETING AT 11:15 A.M. TO ANNOUNCE THAT EXECUTIVE SESSION WAS EXTENDED FOR AN ADDITIONAL 15 MINUTES.

MAYOR LUKSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED THE MOTION TO EXIT EXECUTIVE SESSION AT 11:30 A.M.

Business Items

3. Appointment to Position No. 2 of the Richland City Council

COUNCILMEMBER THOMPSON MOVED AND MAYOR PRO TEM KENT SECONDED THE MOTION TO APPOINT MARIANNE BORING TO SERVE AS INTERIM COUNCILMEMBER IN POSITION NO. 2 ON THE RICHLAND CITY COUNCIL. THE MOTION CARRIED 6- 0.

City Manager Reents stated that Marianne Boring's appointment will be confirmed by resolution at the regular council meeting on October 6, 2020, at which time she will be sworn into office.

Councilmember Thompson provided comments supporting his decision to appoint Marianne Boring to the Richland City Council.

Councilmember Lemley provided comments supporting his decision to appoint Marianne Boring to the Richland City Council.

Councilmember Alvarez thanked all those who applied for the position.

Mayor Pro Tem Kent thanked all the individuals who applied for the vacant council seat.

Councilmember Christensen congratulated Marianne Boring on her appointment.

Mayor Lukson thanked all those who applied and congratulated Ms. Boring on her appointment.

Adjournment

Mayor Lukson adjourned the meeting at 11:41 a.m.

APPROVED:

ATTEST:

Ryan Lukson, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - First Reading

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 32-20, Authorizing a Franchise Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility

Department:
City Attorney

Ordinance/Resolution Number:
32-20

Document Type:
Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 32-20, granting a ten-year franchise agreement to New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for placement of small wireless facilities and other related facilities in the City's rights-of-way.

Summary:

The City is authorized through state and federal statutes to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems. The City's authority to grant franchises for the use of its streets and other public properties is found in RCW 35A.47.040, the Richland City Charter, and RMC Title 28, specifically Chapter 28.14. The franchise enables the City to govern the usage by telecommunications operators of the City's rights-of-way.

New Cingular Wireless PSC, LLC d/b/a AT&T Mobility ("AT&T") has requested that City Council grant it a non-exclusive telecommunications franchise for small wireless facilities and other related facilities. AT&T desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within the City's rights-of-way, and therefore, the City requires a telecommunications franchise. AT&T is a provider of wireless services, and has requested to place small wireless facilities within the City's rights-of-way. Prior to performing any construction in the right-of-way, AT&T must apply for and receive permits from the City.

This franchise does not permit AT&T to operate a broadcast cable system or macro wireless facilities within the right-of-way of the city. Further, this franchise does not allow AT&T to attach to City-owned poles or use the City's infrastructure without a separate lease or license agreement with the City.

Staff recommends approval of Ordinance No. 32-20 for first reading, by title only.

Fiscal Impact:

Administrative costs are paid by AT&T from a deposit required at the time of application.

Attachments:

- I. Ordinance No. 32-20

ORDINANCE NO. 32-20

AN ORDINANCE OF THE CITY OF RICHLAND, granting to New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility), and its successors and assigns, the right, privilege, authority and non-exclusive franchise for ten (10) years to construct, maintain, operate, replace and repair a telecommunications network in, across, over, along, under, through and below certain designated public rights-of-way of the City of Richland, Washington.

WHEREAS, Richland was incorporated as a city of the first class on December 10, 1958; and

WHEREAS, Article 11, Section 11 of the Washington State Constitution provides that the City of Richland “may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, the Richland City Council, as provided in RCW 35.22.570, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto; and

WHEREAS, the City of Richland, a Washington first-class charter city, by Section 2.07(F) of its Charter, has granted to the Richland City Council the authority to grant franchises by ordinance; and

WHEREAS, New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility) (hereinafter referred to as “Franchisee”) has applied to the City of Richland, Washington for a non-exclusive franchise (“Franchise”) to enter, occupy, and use public ways to construct, install, operate, maintain, and repair wireless communications facilities to offer and provide telecommunications services for hire, sale, or resale in the City of Richland (hereinafter referred to as the “City”); and

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers, recognizes and provides state and local governments with the authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis; and

WHEREAS, Washington’s Telecommunications Services Act, codified as Chapter 35.99 RCW and relating to telecommunications providers, recognizes and provides Washington cities with authority to require franchises and use permits for

constructing, installing, operating, maintaining, repairing, or removing telecommunication facilities in public rights-of-way; and

WHEREAS, a franchise is a legislatively approved master permit, as defined in Chapter 35.99 RCW and Title 28 of the Richland Municipal Code (RMC), granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities, subject to requirements that a franchisee must also obtain separate use permits from the City for use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

WHEREAS, a franchise does not include, and is not a substitute for, any other permit, agreement, or other authorization required by the City, including, without limitation, permits required in connection with construction activities in public rights-of-way which must be administratively approved by the City after review of specific plans; and

WHEREAS, no ordinance shall be finally passed unless it is approved by a majority of all members of Council, nor shall any ordinance relating to a franchise be finally passed less than six days following its introduction and first reading, and every ordinance granting a franchise shall become effective at the expiration of thirty days following its first publication, or on any day thereafter fixed by Council; and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this ordinance are in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council as follows:

Section 1. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein, regardless of whether or not they are capitalized herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in Title 28 RMC, Chapter 23.62 RMC, or elsewhere in the Richland Municipal Code, unless inconsistent herewith.

"Cable Television Service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Conduit" means fiber optic cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

"Costs" means actual and documented costs, expenses, and other financial obligations of any kind whatsoever.

"Effective Date" means the thirty-first day following the publication of this Franchise (or a summary thereof) occurs in an official newspaper of the City as provided by law.

"Existing" means a physical structure or facility in existence prior to the effective date of this Franchise.

"Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), epidemic casualty, acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or pro-ration of costs, of any kind whatsoever, including, without limitation, overhead or labor costs, which would have otherwise been incurred.

"Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Public Way" or "Right-of-Way" means land acquired or dedicated for public roads and streets, but does not include: WSDOT managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way, for the purpose of this Franchise, do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

"Street Tree" means any tree located in, or that portion over-hanging, any Public Way and any tree planted on private property near a Public Way at the direction of the City.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

"Utility Poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication. Utility Poles also includes metal light standards.

"Small Wireless Facilities" or "Facilities" means small wireless facilities as defined in 47 CFR Section 1.6002, as may be amended. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts,

pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes, or associated permit, are excluded from “Small Wireless Facilities.”

Section 2. Franchise.

- A. The City grants to Franchisee, subject to the terms and conditions of this Franchise, a non-exclusive franchise and master permit to enter, occupy, and use Public Ways of the City of Richland (the “Franchise Area”) for constructing, installing, operating, maintaining, repairing, and removing Facilities necessary to provide telecommunications services. Except as expressly provided herein, Franchisee shall construct, install, operate, maintain, repair, and remove its Facilities at its expense.
- B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing those personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e. macro facilities). Further, nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing wireline facilities (e.g., wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, franchisee, or a corporate affiliate of Franchisee).
- C. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property, including any City-owned conduit, pole(s), or structure(s). A separate lease or pole attachment agreement is necessary prior to such attachment or use.
- D. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the lawful exercise of the City's police power.
- E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities, and their location or proposed location, in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

- F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.
- G. Nothing in this Franchise shall be construed to limit any taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.
- H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, Public Way, other ways or other property, whether publicly or privately owned.
- I. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities, or to modify public ways to accommodate Franchisee's facilities.
- J. Nothing in this Franchise grants authority to Franchisee to provide or offer a Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).
- K. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.
- L. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.
- M. Nothing in this Franchise authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that third party's permission.
- N. Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Richland Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Richland Municipal Code (collectively the "Codes").
- O. The terms, conditions, and provisions of Title 28 RMC, as currently written or hereinafter modified, are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of Title 28 RMC unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of Title 28 RMC, the terms of this Franchise shall control.

Section 3. Term. Authorization granted under this Franchise shall be for a period of ten (10) years from the Effective Date of this Franchise. Each of the provisions of this Franchise shall become effective upon the Effective Date and shall remain in effect for ten (10) years thereafter.

Section 4. Location of Facilities.

- A. Franchisee must place its facilities underground, except as otherwise expressly provided herein. Franchisee shall not be required to place underground any portion of the Facility that must, for technological reasons, remain above-ground to operate. Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 13.C and the Codes. Franchisee acknowledges and agrees that the City may, at any time in the future, require the relocation at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal or undergrounding project. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground (and internal to the pole if the replacement pole is hollow, for example electrical and fiber), or otherwise consistent with a design plan agreed to by the City and Franchisee, at no cost to the City.
- B. Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this section. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or any other opening of the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, then Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 12, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 6.K.
- C. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons authorized to enter, occupy, or use public ways or City property. Whenever new facilities will exhaust the capacity of a Public Way to reasonably accommodate future users or facilities, the Franchisee shall provide nondiscriminatory access to its facilities to future users and facilities.
- D. Franchisee shall provide the City with information as requested by the City which accurately reflects the horizontal and vertical location and configuration of all of Franchisee's facilities. Franchisee shall provide the City with updated information annually, or upon request by the City.

- E. To the extent that any Rights-of-Way are part of the state highway system ("State Highways"), are considered managed access by the City, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:
- (1) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
 - (2) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and
 - (3) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce, in an action brought in the name of the State of Washington, any condition of this Franchise with respect to any portion of a State Highway.
- F. Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Rights-of-Way, Franchisee shall provide a clear zone in compliance with Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.
- G. Franchisee must obtain written approval from the owners of utility poles, structures and property not owned by Franchisee prior to attaching to, or otherwise using, such poles, structures or property, and provide proof of such approval to the City in the permit application. In the case where the City owns the utility poles or structures, the Franchisee shall comply with Title 14 of the Richland Municipal Code as preparation for a specific project plan and permit submittal. The City makes no representation, and assumes no responsibility, for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of Facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, Franchisee may no longer be permitted to continue to use that specific pole, structure or property, unless expressly authorized by the City. The City shall not be liable for the costs for removal of Facilities arising from expiration, termination,

or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Section 5. Relocation.

- A. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove and/or temporarily disconnect its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken primarily for the private benefit of third party private entities. Collectively all such projects described in this Section 5.A shall be considered a "Public Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.A shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.
- B. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.E. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that, to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.
- C. The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee-owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 5.C, designation of the Right-of-Way for a Public Project shall be

undertaken in the City's Comprehensive Plan in accordance with the requirements of Chapter 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, Utilities element, and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Facility at a particular site if the cost impact of such relocation is excessive and conflicts with the City's Comprehensive Plan.

- D. Upon request of the City (or of a third-party performing work in the Right-of-Way), and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.
- E. Notice and Relocation Process. If the City determines that the Public Project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation (within the City's overall project construction sequence and constraints), to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare, or an emergency beyond the control of the City that will result in severe financial consequences to the City:
 - (1) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.
 - (2) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project; or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (4) below.
 - (3) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair

consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

- (4) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.E, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.
 - (5) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City, and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.
 - (6) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, that necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.
- F. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.
- G. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee). Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's cause of delay in the Public Project.
- H. Franchisee will indemnify, hold harmless, and pay the costs of defending the City (in accordance with the provisions of Section 14), against any and all claims, suits, actions, damages, or liabilities for delays on Public Projects only to the extent caused by, or arising out of, the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond

the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

- I. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.A through Section 5.E, then upon at least ten (10) days written notice to Franchisee, the City may perform such work (including removal), or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 18, and the City shall not be responsible for any damage to the Facilities.
- J. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Construction and Installation Requirements.

- A. Except as to emergency repairs, Franchisee shall, prior to excavating within any street, alley or other public place, or installing any conduit, overhead facilities or equipment therein, or relocating, constructing, or performing maintenance within the Rights-of-Way, file with the Public Works Director plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, as well as a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Franchisee shall comply with the permit requirements and conform to all requirements of Chapter 12.08 RMC regarding right of way construction, as it currently exists or as it may be amended.
- B. The technical performance of the Facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City has the full authority permitted by applicable law to enforce compliance with these technical standards.
- C. All installations of Facilities will be durable, and installed in accordance with good engineering, construction, and installation practices.
- D. All Facilities shall be constructed and installed in such a manner and at such points so as not to inconvenience public use of the public ways (or to adversely affect the public health, safety or welfare) and in conformity with plans approved by the City, except in instances in which deviation is requested in writing by the Franchisee, and approved by the City.
- E. The construction plans shall conform to all federal, state, local, and industry codes, rules, regulations, and standards. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

- F. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.
- G. In the event of an emergency requiring immediate action by Franchisee for the protection of the Facilities, City's property or other persons or property, Franchisee may proceed without first obtaining the normally required permits. In such event, Franchisee must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.
- H. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. The City shall not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this subsection, except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.
- I. Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property, including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic, and protecting rights-of-way improvements, private facilities and public safety.
- J. Whenever necessary, after construction or maintaining any of Franchisee's Facilities within the rights-of-way, the Franchisee shall, without delay, and at Franchisee's sole expense, remove all debris and restore the surface disturbed by Franchisee as nearly as possible to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Franchisee shall replace any property corner monuments, survey reference, or hubs that were disturbed or destroyed during Franchisee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws, and to the City's satisfaction, and, where applicable, to City specifications.
- K. Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Cell

Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City. Franchisee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise Area, including safety of all persons and property during the performance of any work.

- L. Franchisee shall, at all times, keep up-to-date maps and records showing the location and sizes of all Franchisee's facilities installed by it in the Franchise Area. Franchisee shall provide, at the City's request, a copy of facilities maps for the City's use. All books, records, maps, and other documents maintained by Franchisee, with respect to its facilities within the Rights-of-Way, shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.
- M. All Franchisee's underground Facilities shall be placed in accordance with current City regulations and project permit requirements. Unless otherwise approved by the Public Works Director, underground Facilities must maintain (parallel) five (5) feet separation from City water and sewer mains. Franchisee shall restore the Public Way to pre-construction condition or better. Franchisee agrees to pay all costs and expenditures required on Rights-of-Way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Franchisee for a period of five (5) years after the excavation. Favorable weather conditions permitting, Franchisee agrees to repair Rights-of-Way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Franchisee within the prior five (5) years upon forty-eight (48) hours' notice excluding weekends and holidays. If Franchisee fails to undertake such repairs as herein provided, the City may perform the repairs at Franchisee's expense.
- N. The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director, there is inadequate space (including, but not limited to, compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a generally applicable pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.
- O. Franchisee may trim trees which are upon and/or overhang on public ways, and other public places of the City so as to prevent the branches of such trees from

coming in contact with Franchisee's Facilities. The right to trim trees in this way shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for removal of all debris resulting from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services. However, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims (of any nature) arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 7. Coordination of Construction and Installation Activities and Other Work.

- A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the Public Ways at least annually or as determined by the City.
- B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.
- C. If required by permit, at least twenty four (24) hours prior to entering a Public Way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of properties adjacent to such Public Ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger, or by other form of notice reasonably acceptable to City. Franchisee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.
- D. Franchisee shall make available, and accept, the co-location of property of others within trenches excavated or used by Franchisee in the public ways, provided the

costs of the work are fairly allocated between the parties and such co-location does not materially or harmfully interfere with Franchisee's use.

- E. By February 1 of each year, Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property, to the extent that such information is available or known to Franchisee.
- F. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the Public Way to be opened. When notice has been given, Franchisee may only construct or install facilities during such period that the City has opened the Public Way for construction or installation.

Section 8. Temporary Removal, Adjustment or Alteration of Facilities.

- A. Upon thirty (30) days' notice, Franchisee shall temporarily remove, adjust, turn off, or alter the position of its Facilities (at its cost), at the request of the City for public projects, events, or other public operations or purposes. City shall provide notice to Franchisee immediately upon completion of the public project, event, or other public purpose so that Franchisee may return its Facilities to the original location.
- B. Prior to doing any work in the Rights-of-Way, Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington if applicable and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate the horizontal and vertical location of its underground facilities by excavating its Facilities consistent with the requirements of Chapter 19.122 RCW and shall complete this service within fourteen (14) days from the date of the City or third party's request, at no cost to the City. If the City's request is in support of a third party's project, Franchisee shall be entitled to recover its cost from the project sponsor. The City shall not be liable for any damages to Franchisee's Facilities, or for interruptions in service to Franchisee's customers, that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether or not the City issued a permit.
- C. If any person requests permission from the City to use a Public Way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the

person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

- (1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;
 - (2) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, as determined in the sole discretion of the City;
 - (3) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and hold Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of, or in conjunction with, the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and
 - (4) Completion of notification requirements by a person who has obtained permission from the City to use a Public Way for the moving or removal of any building or other object shall be deemed to be notification by the City.
- D. The City may require Franchisee to temporarily remove, adjust or alter the position of Franchisee's facilities as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.
- E. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 9. Safety and Maintenance Requirements.

- A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner, so as to minimize interference with the free passage of traffic, and the free use of adjoining property, whether public or private.
- B. Franchisee, in accordance with applicable federal, state, and local safety requirements, shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are

likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Franchisee, or have them made at the cost of Franchisee.

- C. If required by the permit, Franchisee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Franchisee shall implement and comply with its approved traffic control plan during execution of its work.
- D. Franchisee shall maintain its Facilities in proper working order. Franchisee shall restore its Facilities to proper working order within thirty (30) days after receipt of notice from the City that Facilities are not in proper working order, or such longer period of time as approved by City and Franchisee. Notwithstanding the above, if the City determines that that the Facilities are a public safety concern (e.g., the equipment box is detached), then Franchisee shall repair such Facility immediately, but no less than forty-eight (48) hours after notice, unless such time period is extended by the City.
- E. Franchisee shall endeavor to maintain all equipment lines and Facilities in an orderly manner, including, but not limited to, the removal of all bundles or extraneous wires used for the connection of aerial facilities (e.g., connecting equipment boxes to antennas). All installation of facilities shall be installed in accordance with industry-standard engineering practices, and shall comply with all federal, state, and local regulations, ordinances, and laws.
- F. Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10. Removal of Unauthorized Facilities.

- A. Any Small Wireless Facilities installations in the Right-of-Way that were not authorized under this Franchise ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either: (i) establish that the site was authorized; or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged

an amount of Five Hundred and 00/100 Dollars (\$500.00) per day per Unauthorized Facility ("Unauthorized Facility Fee"). The Unauthorized Facility Fee shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Fee shall be suspended upon the submission of a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Fee will resume until the Unauthorized Facilities are removed. In which case, Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchisee an invoice detailing the total amount of the Unauthorized Facility Fee, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchisee remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Fee pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Wireless Facilities but such Small Wireless Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

- B. Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 13.F. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.
- C. If Franchisee leases a structure from a third party and such third party later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the third party, but not more than ninety (90) days after such notification from the third party, at no cost to the City, and shall remove the pole if so required by the third party. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.
- D. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or

any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

- E. The City may permit Franchisee's Facilities to be abandoned in place, in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.
- F. Any Facilities which are not removed within one hundred and eighty (180) days of either: (i) the date of termination or revocation of this Franchise; or (ii) the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 10 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.
- G. The provisions of this Section 10 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 11. Restoration of Public Ways and Other Property.

- A. When Franchisee, or any person acting on its behalf, does any work in or affecting any Public Way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways and property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's cost, and Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City shall outline the issues that must be corrected by Franchisee. Franchisee shall then have seven (7) days to correct such issues, unless such period is otherwise extended by the City. If the issues are not resolved within that timeframe, the City may make the restoration itself at the cost of Franchisee, or have such restoration made at the cost of Franchisee.
- D. The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 12. Use and/or Development Authorization and Permits. Franchisee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a Public Way.

- A. In addition to any permitting requirements of the City specific to Small Wireless Facilities found in Title 28 RMC and Chapter 23.62 RMC, the Franchisee must provide the information described in Section 12.B below.
- B. Franchisee shall provide the following information for all facilities that it proposes to construct or install:
 - (1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:
 - a. The location and route of the proposed facilities;
 - b. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the Public Way along the proposed route;
 - c. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;
 - d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.
 - (2) If Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole. If the overhead facilities are subsequently relocated underground, Franchisee shall relocate its Facilities consistent with the requirements of this Franchise. If Franchisee proposes to install overhead facilities on City-owned poles or structures, the Franchisee shall comply with all applicable provisions of Title 14 of the Richland Municipal Code.
 - (3) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:
 - a. Evidence of ownership or authorization to use such ducts or conduits;
 - b. Conditions of use imposed by the owner(s) of the ducts or conduits;
 - c. If known to Franchisee, or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and
 - d. If known to Franchisee, or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.

- (4) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:
 - a. The location proposed for new ducts or conduits;
 - b. The total capacity of such ducts or conduits; and
 - c. The initial listing of any collocated facilities located within Franchisee constructed or installed ducts or conduits.
 - (5) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.
 - (6) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.
 - (7) Such other documentation and information regarding the facilities requested by the City.
- C. Franchisee shall not be granted development authorization, or issued permits for construction or installation of new Facilities, unless Franchisee is in full compliance with the provisions of this Franchise, and all of Franchisee's existing Facilities have been permitted.

Section 13. Small Wireless Facilities.

- A. **City Retains Approval Authority.** The City shall have the authority at all times to control by appropriately exercised police powers (through ordinance or regulation consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington), the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.
- B. **City Approvals and Permits.** The granting of this Franchise is not a substitute for any other City required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 12) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the

Codes, and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 12. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as Right-of-Way use permits and traffic control permits.

C. Preference for Existing Infrastructure; Site Specific Agreements.

- (1) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.
- (2) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure, and the overall height of the replacement structure and the Facility is over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or designee.
- (3) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures (or deviate in height or design as permitted within the Codes) are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.
- (4) This Section 13.C does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of Small Wireless Facilities.

D. Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

- E. Eligible Facilities Requests. The Parties agree that the intent of this Franchise is to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. When considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. §1455(a), the parties acknowledge that the designs as illustrated in a Small Wireless Facility permit are intended to maintain the appearance of a light or utility pole.
- F. Inventory. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than thirty (30) days after request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation, and photographs taken before and after the installation of the Small Wireless Facility, as well as photos taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations, as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory, and may thereafter omit reference to the Deactivated Facilities.
- G. Graffiti Abatement. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure, or on the Small Wireless Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.
- H. Emissions Reports.
 - (1) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable Law.
 - (2) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities, which the City may request on no more than five (5) Facilities per year, and no more than once per year, unless an issue with the RF emissions is found, or as otherwise required by a permit due to a modification of the Facility. The City may inspect any of Franchisee's

Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility, or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling (800) 832-6662 and also by written notice pursuant to Section 26. Franchisee is required to promptly turn off that portion of the Facility that is in violation no later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 18.

- I. Interference with Public Facilities. Franchisee's Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or with the emergency communications operation or equipment. If the Small Wireless Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 13.I or removal by the City consistent with Section 6.H. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more immediate action consistent with Section 6.H to protect the public health, safety, and welfare.
- J. Interference with Other Facilities. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 14. Hold Harmless and Assumption of Risk.

- A. Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials (elected or appointed) employees, agents and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property to the extent caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.
- B. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 14.
- C. The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 14.C. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, also including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding, as mutually agreed by City and Franchisee, and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate, and to cause its employees and agents to cooperate, with

the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

- D. Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials (elected or appointed), employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 14, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.
- E. Notwithstanding any other provisions of this Section 14, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third party claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, officials (elected or appointed), agents, employees, or contractors.
- F. The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise.

Section 15. Insurance.

- A. Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall endeavor to require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-, VII. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement (or blanket endorsement) to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence insurance that includes:
- (1) Automobile Liability insurance with limits of \$5,000,000 combined single limit each accident for bodily injury and property damage;
 - (2) Commercial General Liability insurance as per form ISO CG 00 01 or its equivalent, written on an occurrence basis with limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, contractual liability; premises; operations; independent contractors; products and completed operations; broad form property damage; explosion, collapse and underground (XCU);
 - (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable; and
 - (4) Excess Umbrella liability policy with limits of \$10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.
- B. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and Umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 15. Franchisee's Umbrella liability insurance policy shall be at least as broad as its primary coverage.
- C. The required Commercial General Liability and Umbrella/Excess Liability insurance policies obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as additional insureds as their interests may appear under this Franchise, with coverage at least as broad as ISO form CG 20 11 or CG 20 26, or their equivalent and the required Commercial Auto Liability policy obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as an additional insured with

regard to the use of vehicles by or on behalf of Franchisee while in performance of this Agreement. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and except with respect to the rights and duties of Franchisee as the first named insured. Franchisee shall provide to the City a certificate or copies of required insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required, is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required Commercial General and Automobile Liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

- D. Upon receipt of notice from its insurer(s), Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation or nonrenewal of any insurance policy that is not replaced, required pursuant to this Section 15. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 15. Failure to provide the insurance cancellation notice and to furnish to the City certificates of insurance as evidence of renewal or replacement insurance policies meeting the requirements of this Section 15 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 25 below. Notwithstanding the cure period described in Section 25.B, the City may pursue its remedies within ten (10) business days of Franchisee's failure to furnish certificates of insurance as evidence of renewal or replacement insurance.
- E. Franchisee's maintenance of insurance as required by this Section 15 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.
- F. The City may review all insurance limits once every three (3) years during the term, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee and review by Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement
- G. As of the Effective Date of this Franchise, Franchisee is not self-insured with respect to the required insurance. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee (or its affiliated parent) entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's (or its parent company's), most recent audited financial statements, if such financial statements are not otherwise publicly

available; (ii) Franchisee (or its parent company) is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 16. Security Fund.

- A. Franchisee shall establish and maintain a security fund in the amount of fifty thousand dollars (\$50,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City and running or renewable for the term of this Franchise. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a Public Way.
 - (1) The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.
- B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:
 - (1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;
 - (2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;
 - (3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
 - (4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.
- C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.
- D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Construction and Maintenance Bonds.

- A. If required by permit, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 17.B. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.A. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.
- B. Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 17.B must be in place prior to City's release of the bond required Section 17.A. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.B. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 18. Taxes, Charges, and Fees.

- A. Franchisee shall pay and be responsible for (i) all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, (ii) any use and/or development authorizations which may be required, or (iii) any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not

excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.

- (1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise.
 - (2) Franchisee shall pay fees according to applicable sections of the Richland Municipal Code, including but not limited to Title 28, Title 12, and Title 14.
- B. Franchisee shall pay and be responsible for taxes permitted by law. Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 RMC, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments, the process in Title 5 RMC shall control. In that event, the City may not enforce remedies under Section 25.A or Section 25.B or commence a forfeiture or revocation process pursuant to Section 25.C until the dispute is finally resolved either consistent with Richland Municipal Code Title 5 or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Title 5 RMC as may be permitted by law.
- C. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff and City Attorney time, undertaken through the authority granted in this Franchise, or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 18(E).
- D. Franchisee shall promptly reimburse the City in accordance with the provisions of Section 18.E and Section 18.F for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.
- E. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an billing for incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-

Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities, or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

- F. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.
- G. Franchisee hereby warrants that its operations, as authorized under this Franchise, are those of a telephone business as defined in RCW 82.16.010, or a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 19. Shared Excavations; Additional Ducts and Conduits.

- A. If Franchisee shall, at any time, plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:
 - (1) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;
 - (2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
 - (3) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts: and

- (4) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.
- B. Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. If the City elects to use Franchisee's ducts or conduits, the parties shall enter into contract consistent with RCW 80.36.150 to, among other things, provide for the recovery of Franchisee's incremental costs.
- C. Except as expressly provided in this section, Franchisee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Franchisee in accordance with this Section 19.

Section 20. Intentionally Omitted.

Section 21. Acquisition of Facilities. Upon Franchisee's acquisition of any facilities in the Public Way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

Section 22. Vacation of Rights-of-Way. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 23. Records; Duty to Provide Information.

- A. Within thirty (30) days of a written request from the City, but in no event more than once annually, Franchisee shall furnish the City with all requested information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise:
 - (1) That Franchisee has complied with all requirements of this Franchise;
 - (2) That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid; and
 - (3) Franchisee's obligations under this section are in addition to those provided in Section 6.J, Section 6.L and subsection (B) below.
- B. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of

Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.

- C. All books, records, maps and documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 23.C shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by state or federal law, nothing in this Section shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.
- D. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, the parties will promptly meet and discuss how Franchisee shall produce the documents.
- E. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.
- F. Nothing in this Franchise prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. Franchisee shall indemnify, defend, and hold the City harmless against any claims, liabilities, penalties, costs and attorneys' fees that the City incurs based on public records that are in the possession or under the dominion and control of Franchisee, including, but not limited to, Franchisee's failure or declination to retain or conduct a reasonable search in compliance with law, withhold in whole or in part,

or timely provide the public records to the City, or based upon any and all actions of Franchisee in seeking to prevent disclosure of a record in whole or in part that is in the possession of the City. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 24. Assignment or Transfer. Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

- A. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and twenty (120) days prior to the proposed date of assignment, transfer, or disposal:
 - (1) Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;
 - (2) Any other information reasonably required by the City; and
 - (3) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.
- B. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.
- C. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.
- D. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 24.C below, or to an entity that acquires all or substantially all of

Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes.

- E. Any transactions which singularly or collectively result in a change of 50% or more of the: (i) ownership or working control (for example, management of Franchisee or its Facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Facilities within the City, shall be considered an assignment or transfer requiring notice to and consent by the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.
- F. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Section 25. Violations, Noncompliance, and Other Grounds for Termination or Cancellation.

- A. The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law, equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver
- B. If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying, with reasonable particularity, the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the

specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion: (1) commence revocation proceedings, pursuant to Section 25.C; or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the security fund set forth in Section 16; or (3) suspend the issuance of additional permits; or (4) pursue other remedies as described in Section 25.A above.

C. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for any of the following reasons:

- (1) Violation of or noncompliance with any term or condition of this Franchise by Franchisee;
- (2) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Franchisee;
- (3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any Public Way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;
- (4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;
- (5) Misrepresentation or lack of candor, by or on behalf of, Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;
- (6) Abandonment of facilities;
- (7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or
- (8) Insolvency or bankruptcy of Franchisee.

D. In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice, and providing Franchisee a reasonable period of time not exceeding sixty (60) calendar days to furnish evidence:

- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

- (2) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or
 - (3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.
- E. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (D) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.
- F. If the City Council determines that the violation, noncompliance, or other grounds for termination or cancellation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:
 - (1) Whether the misconduct was egregious;
 - (2) Whether substantial harm resulted;
 - (3) Whether the violation was intentional;
 - (4) Whether there is a history of prior violations of the same or other requirements;
 - (5) Whether there is a history of overall compliance; and
 - (6) Whether the violation was voluntarily disclosed, admitted or cured.
- E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

Section 26. Notices.

- A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City: City of Richland
Attn: City Manager
625 Swift Boulevard
Richland, WA 99352

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

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

- B. Franchisee shall additionally provide a phone number and designated official to respond to City questions. In case of emergencies, the City may contact **(800) 832-6662** to request immediate repair or shutoff. After being notified of an emergency, Franchisee shall cooperate with the City and make commercially reasonable efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.
- C. Additionally, Franchisee shall designate a Franchise manager or government affairs liaison, and shall use reasonable efforts to periodically update the City with contact information for a Franchise manager or government affairs liaison to act as a resource for the City for Franchise related questions, including but not limited to questions related to Franchise compliance, scheduling and construction. Failure to periodically update the City with the contact information will not be considered a breach of this Franchisee.

Section 27. Non-Waiver. The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 28. Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 29. Limitation of Liability. Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servants, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Section 30. Intentionally Omitted.

Section 31. Governing Law and Venue. This Franchise and use of the applicable Public Ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Benton County, or in the case of a federal action, the United States District Court for the Eastern District of Washington at Richland, Washington, unless an administrative agency has primary jurisdiction.

Section 32. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other section, sentence, clause or phrase of this Franchise nor its application to any other person or entity.

Section 33. Miscellaneous.

- A. Equal Employment and Nondiscrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.
- B. Descriptive Headings. The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.
- C. Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, as well as costs and reasonable attorneys' fees on appeal, in addition to such other relief as the court may deem proper.

- D. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.
- E. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.
- F. Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.
- G. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.
- H. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.
- I. Modification. The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.
- J. Non-exclusivity. This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any Public Way.
- K. Rights Granted. This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title. This Franchise may be enforced by both law and equity.
- L. Contractors and Subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

- M. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional. Notwithstanding the foregoing, any and other provision in this Franchise, Franchisee shall not be liable or responsible for any environmental condition except to the extent Franchisee causes the condition or exacerbates the condition of which it has reason to be aware.
- N. Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.
- O. FAA and FCC. Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance, and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately (on notice to the Franchisee), or proceed to cure the conditions of noncompliance at the Franchisee's expense.
- P. Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 15, any Performance Bond, if applicable, pursuant to Section 17.A, and the security fund required pursuant to Section 16.
- Q. Survival. All of the provisions, conditions, and requirements of Section 5, Section 10, Section 11, Section 14, Section 15, Section 31 and Section 33.Q of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise

Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

R. Expiration. If this Franchise expires without renewal, the City may, subject to applicable law:

- (1) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
- (2) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 10.

Section 34. Publication. The City Clerk is authorized and directed to publish this Ordinance in accordance with the Richland City Charter.

Section 35. Effective Date. This Ordinance shall become effective on the thirty-first (31st) day after its first publication as required by law, but if, and only if, the Franchisee has endorsed this Ordinance and accepted the terms and conditions thereof.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the ____ day of _____, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: _____

EXHIBIT A
ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform, and be bound by, each and all of the terms and conditions imposed by the franchise and the municipal code and ordinances of the City.

By: _____

Printed Name: _____

Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the City Council in accordance with this Franchise; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this Franchise; and (3) the Franchisee has paid all applicable processing costs set forth in the franchise.

The effective date of this Franchise ordinance is: _____.

Jennifer Rogers, City Clerk



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - First Reading

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Ordinance No. 33-20, Authorizing the Vacation of a Portion of Robertson Drive

Department:
Public Works

Ordinance/Resolution Number:
33-20

Document Type:
Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 33-20, authorizing the vacation of a portion of Robertson Drive.

Summary:

The segment of Robertson Drive near Henderson Loop and Snyder Street was realigned by a City-funded construction project, leaving a portion of the original right-of-way unused for street purposes. Because the segment is no longer needed for municipal purposes, the City's best interests are served by vacating the unused right-of-way to the adjacent privately owned parcel. The property owner concurs with this proposal. Easements for public utility infrastructure will be drafted and recorded for utilities that remain in the proposed vacated right-of-way.

As required by state law, a duly noticed public hearing was held on October 6, 2020. Barring any compelling testimony to the contrary, staff recommends approval of Ordinance No. 33-20 for first reading, by title only.

Fiscal Impact:

None.

Attachments:

I. Ordinance No. 33-20

WHEN RECORDED RETURN TO:

Richland City Clerk's Office
625 Swift Boulevard, MS-05
Richland, WA 99352

ORDINANCE NO. 33-20

AN ORDINANCE of the City of Richland vacating a portion of Robertson Drive.

WHEREAS, the City has realigned a section of Robertson Drive to connect with the new intersection and extension of Hagen Road, leaving a section of Robertson Drive right-of-way; and

WHEREAS, the realigned section of Robertson Road and extension of Hagen Road has been established and dedicated by Ordinance No. 36-19; and

WHEREAS, the right-of-way depicted on **Exhibit B** is no longer needed for public road purposes because the realignment of Robertson Drive and surrounding development has changed the street network; and

WHEREAS, easements for public infrastructure will be drafted and recorded for utilities that remain within the proposed vacated right-of-way; and

WHEREAS, a public hearing is required prior to a right-of-way vacation action; and

WHEREAS, on September 1, 2020, Richland City Council adopted Resolution No. 127-20, setting October 6, 2020 at 6:00 p.m. as the time and place for said hearing; and

WHEREAS, on September 2, 2020, notice was published that a public hearing would be held on October 6, 2020 to take public testimony on the proposed vacation action; and

WHEREAS, at the time and place fixed and designated in this notice, a hearing was held by Richland City Council to receive public testimony.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. The portion of Robertson Drive, as described on **Exhibit A** and shown on **Exhibit B**, is hereby ordered to be vacated.

Section 2. The City Clerk is directed to file with the Auditor of Benton County, Washington, a copy of this Ordinance and the attached exhibits, duly certified by the Clerk as a true copy.

Section 3. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the _____ day of _____, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: _____

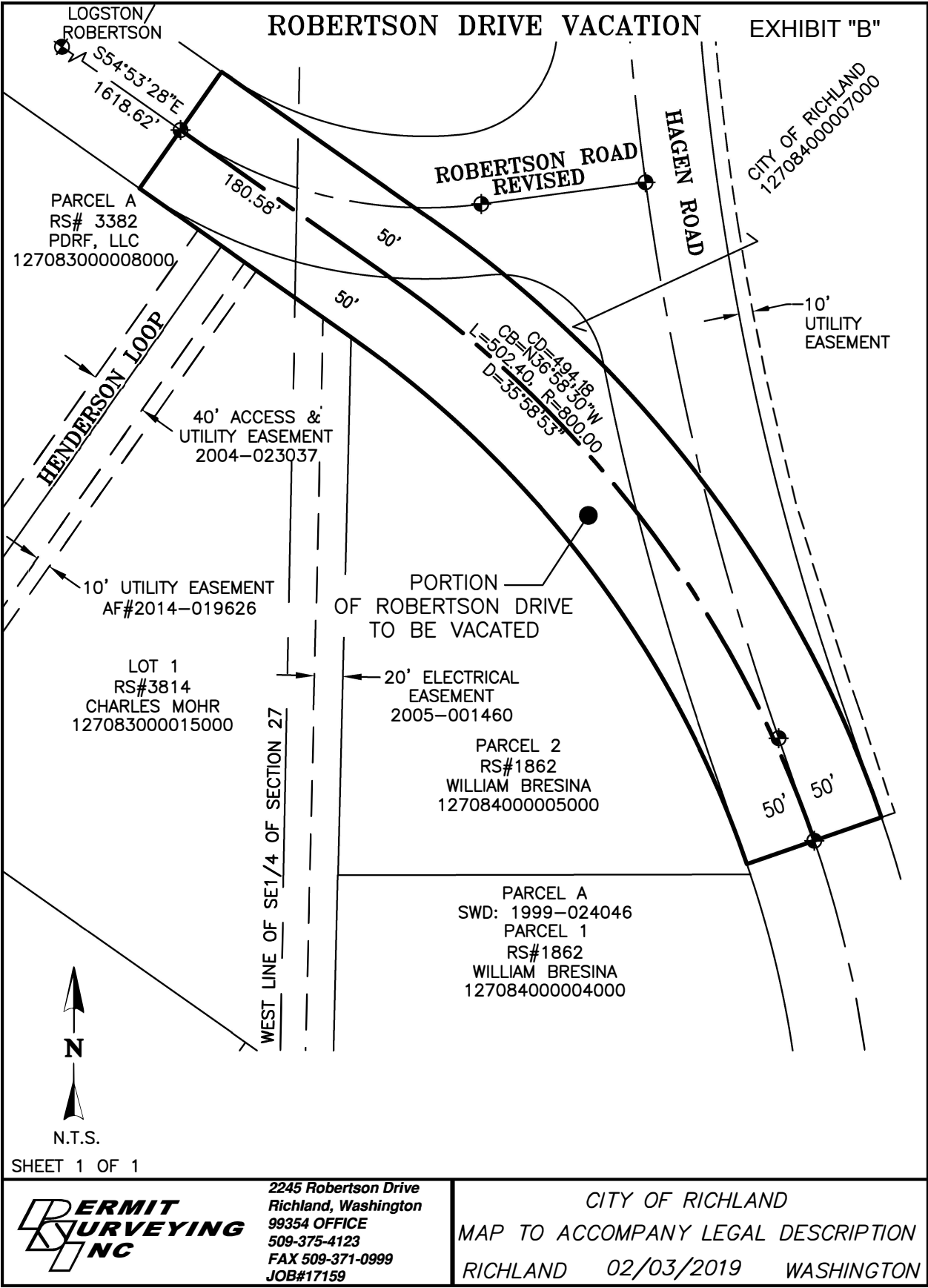
EXHIBIT A
ROBERTSON DRIVE VACATION

A VACATION OF PORTION OF A 100.00 FOOT WIDE CORRIDOR FOR RIGHT-OF-WAY PURPOSES, FORMERLY KNOWN AS ROBERTSON DRIVE, LYING IN A PORTION OF THE SOUTH HALF OF SECTION 27, TOWNSHIP 10 NORTH, RANGE 28 EAST, WILLAMETTE MERIDIAN, SITUATED IN BENTON COUNTY, WASHINGTON, SAID PORTION OF RIGHT-OF-WAY TO BE VACATED BEING 50.00 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE INTERSECTION OF ROBERTSON DRIVE AND LOGSTON BOULEVARD AS DEPICTED ON RECORD OF SURVEY 4575, AS RECORDED IN VOL. 1 OF SURVEYS, PAGE 4575, UNDER AUDITOR'S FILE NUMBER 2015-003647, RECORDS OF BENTON COUNTY, WASHINGTON; THENCE SOUTH $54^{\circ}53'28''$ EAST ALONG THE CENTERLINE OF SAID ROBERTSON DRIVE FOR A DISTANCE OF 1618.62 FEET TO A POINT OF INTERSECTION OF THE CENTERLINE OF ROBERTSON DRIVE REVISED AND THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING SOUTH $54^{\circ}53'28''$ EAST FOR A DISTANCE OF 180.58 FEET TO A POINT ON A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF $35^{\circ}58'53''$ HAVING A RADIUS OF 800.00 FEET, AN ARC LENGTH OF 502.40 FEET, A CHORD BEARING SOUTH $36^{\circ}58'30''$ EAST AND A CHORD DISTANCE OF 494.18 FEET TO A POINT OF INTERSECTION OF THE CENTERLINE OF HAGEN ROAD EXTENSION, FORMERLY KNOWN AS ROBERTSON DRIVE AND THE TERMINUS OF SAID CENTERLINE.

THE SIDELINES OF SAID DESCRIBED VACATED CORRIDOR SHALL EXTEND OR FORESHORTEN TO TERMINATE OR CONNECT TO AT THE INTERSECTION OF SAID RIGHT-OF-WAY MARGINS OF ROBERTSON DRIVE AND HAGEN ROAD.





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - First Reading

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Ordinance No. 34-20, Amending Chapter 12.02 of the Richland Municipal Code related to the Street Functional Classification Plan

Department:
Public Works

Ordinance/Resolution Number:
34-20

Document Type:
Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 34-20, Amending Chapter 12.02 of the Richland Municipal Code related to the street functional classification plan.

Summary:

The City has need, from time to time, to update the Richland Municipal Code to eliminate ambiguity, remedy conflict with state or federal law, and bring the code into alignment with current practices. The Federal Highway Administration and the Washington State Department of Transportation maintain a system of street classifications for all public streets, including those owned and maintained by local governments. Chapter 12.02 RMC directs that this system be activated in Richland, and defines characteristics of streets according to the classification system.

A system of street classifications enables the City to develop and apply regulations and standards to streets that are appropriate to their use and character, and that promote safe and efficient travel within the City. Chapter 12.02 RMC currently includes terminology not in alignment with the state and federal classification systems. The geographic expansion of the City over time, and the development and improvement of property to include new streets has resulted in the City's street classification system being outdated. In addition, staff has identified the need to designate streets owned and operated by others, such as Port districts and homeowner associations, as private streets.

Implementation of the street classification system involves assigning the appropriate classification to each street segment in the City. Staff has prepared a package of classification changes to implement the updates to Chapter 12.02 RMC definitions. Staff's proposed changes to the applied street classification system must be evaluated and accepted by the Washington State Department of Transportation, and thus are subject to change based on that review. WSDOT's review will not require revisions to the municipal code.

Staff recommends approval of Ordinance No. 34-20 for first reading, by title only.

Fiscal Impact:

None.

Attachments:

I. Ordinance No. 34-20

ORDINANCE NO. 34-20

AN ORDINANCE of the City of Richland amending Chapter 12.02 of the Richland Municipal Code related to street classifications.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code to eliminate ambiguity, remedy conflict with state or federal law, and bring the code into alignment with current practices; and

WHEREAS, Chapter 12.02 defines characteristics of streets according to a classification system; and

WHEREAS, the Federal Highway Administration and the Washington State Department of Transportation maintain a system of street classifications for all public streets, including those owned and maintained by local governments; and

WHEREAS, a system of street classification enables the City to develop and apply regulations and standards to streets that are appropriate to their classification and character, and that promote safe and efficient travel within the city; and

WHEREAS, Chapter 12.02 RMC currently includes terminology not in alignment with state and federal classification systems; and

WHEREAS, the City's geographic expansion over time, and the development and improvement of property to include new streets, has caused the City's street classification system to become outdated; and

WHEREAS, changes to the City's street classification system are subject to the Washington State Department of Transportation's review and approval.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Chapter 12.02 of the Richland Municipal Code, entitled Street Functional Classification Plan, as first enacted by Ordinance No. 202, and last modified by Ordinance No. 27-12, is hereby amended as follows:

Chapter 12.02 STREET FUNCTIONAL CLASSIFICATION PLAN

Sections:

- 12.02.010 Purpose.**
- 12.02.020 Intent.**
- 12.02.030 Principal arterials.**
- 12.02.040 Minor arterials.**
- 12.02.050 Major collector streets.**
- 12.02.060 Minor collector streets.**

12.02.070 Local streets.

12.02.075 Private Streets.

12.02.080 Implementation.

12.02.010 Purpose.

All roads within the city shall be classified as principal arterials, minor arterials, major collector streets, minor collector streets, ~~or~~ local streets or private streets.

12.02.020 Intent.

Functional classification is the process by which streets are grouped into classes, or systems, according to the character of the service they are intended to provide. Most travel involves a movement through a network of streets. It becomes necessary then to determine how this travel can be channelized within the network in a safe, logical and efficient manner. Functional classification defines the nature of this channelization process by defining the part that any particular street should play in serving the flow of trips through a street network.

Streets identified in the functional classification system are derived from existing streets and those identified on the city's transportation improvement plan (TIP), which is adopted by the city council annually. The TIP is a planning document to facilitate the funding and construction of the city's transportation element of the comprehensive plan.

Unconstructed portions of streets and corridors as designated on the TIP have been included to provide the long-range planning and regulatory control necessary to protect and maintain the function of the street/corridor.

The following descriptions of street classifications are intended to align with the state and federally defined street classification system. Washington State is responsible for classification of the state and federal routes within city limits, including State Route 240 (SR-240), Interstate 182 (I-182), and State Route 224 (SR-224). The City's street classification system is defined to support the state classifications and leverage the character of the state routes for safe and efficient travel within the city.

12.02.030 Principal arterials.

Principal arterials provide travel service (high mobility) for major traffic movements within the city. They serve as major centers of activity, intra-area travel between suburban centers, between larger communities, and between major trip generators. Principal arterials serve the longest trips and carry the major portion of trips entering and leaving the overall area. Typically they are one of the highest traffic volume corridors in the city. They frequently serve as important inter-urban and inter-city bus routes. The Average Daily Traffic (ADT) is typically in the range of 12,000 to 40,000 vehicles per day. The spacing of principal arterials is usually about one mile. Service to abutting land should be subordinate to the provision of travel service for major traffic movements. Desirably it is located on community and neighborhood boundaries or adjacent to but not through major shopping centers, parks and other homogeneous areas.

12.02.040 Minor arterials.

Minor arterials interconnect with and augment the principal arterial system. Minor arterials connect major arterials to collector streets and small generators. They provide service to medium size generators, such as less intensive commercial development, high schools and some middle/grade schools, warehousing areas, active parks and ball fields and other land uses with similar trip generation potential. They distribute travel to smaller geographic areas and communities than those identified within the principal arterial system. They provide travel service trips of moderate length of a somewhat lower level of travel mobility than principal arterials. The ~~design-year~~ ADT is typically in the range of ~~2,500~~ 5,000 to 15,000 vehicles per day. Spacing of minor arterials is usually less than one mile in fully developed areas. They provide intra-community continuity and are typically a continuous street with a direct rather than meandering alignment. They may carry local bus routes.

Minor arterials allow for more emphasis on land access than the principal arterial system, but are still mobility oriented. They usually do not penetrate identifiable neighborhoods.

12.02.050 Major collector streets.

Major collector streets distribute trips between the principal and minor arterials and the ultimate destination, or may collect traffic from the neighborhood streets and channel it into the arterial system. They carry a low portion of through traffic and a high portion of local traffic with an origin or destination within the area. Major collector streets provide both land access service and traffic mobility with more emphasis given to access. Spacing is approximately one-quarter mile. The ~~design-year~~ ADT is typically in the range of 1,~~500~~ to ~~4,000 vehicles per day. The allowable traffic volumes on arterial collector within the South Richland collector street finance plan boundary shall be allowed to increase to no more than~~ 8,000 vehicles per day ~~while the plan is in effect~~.

12.02.060 Minor collector streets.

A minor collector street ~~serves as primary access between the development/subdivision and the arterial/arterial collector system. It~~ distributes and/or collects traffic from the local roads in the residential neighborhood and channels it into onto the arterial and collector street system. It directly serves any major traffic generators within the neighborhood such as a church or an elementary school. It usually serves one moderate sized neighborhood or a combination of a few small developments. It serves little or no through traffic generated outside of the neighborhood. In some instances, a minor collector can be identified in business or industrial parks. The ~~design-year~~ ADT is typically in the range of ~~400~~ 500 to ~~1,500~~ 2,000 vehicles per day.

12.02.070 Local streets.

All streets or parts of streets owned by the City and not designated as principal arterials, minor arterials, major collector streets or minor collector streets are classified and designated as local streets. Local streets provide direct access from abutting property to the arterial and collector street system. They are typically of limited length ~~an internal subdivision road~~ and service to through traffic across multiple developments is deliberately discouraged. Typical ADT is generally less than 1,000 vehicles per day.

12.02.075 Private Street.

Private streets are streets constructed on private property that are dedicated to general public use by a formal property dedication. Private streets are generally established for the benefit of the adjacent property owners and their need to connect to the public street network. Private streets are generally of the character of a public local street as described above in that they support low volumes of travel and serve the direct property access needs of the adjacent properties.

12.02.080 Implementation.

Street functional classification shall be as designated in the latest adopted version of the FHWA Tri-Cities Urbanized Area Functional Classification System as it pertains to the city of Richland, and as maintained in the WSDOT Data Portal for Functional Classification. The Public Works Director ~~city engineer~~ is directed to implement the street classifications described in this chapter through collaboration with the Washington State Department of Transportation. In addition, the Public Works Director is directed to establish ~~the use of~~ appropriate street design standards, traffic control devices and access regulations consistent with the street classification system.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the _____ day of _____, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: _____



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area 6 - Enhance Neighborhood & Community Safety

Subject:

Ordinance No. 29-20, Amending Richland Municipal Code Title 9: Crime

Department:
City Attorney

Ordinance/Resolution Number:
29-20

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 29-20, amending Title 9 of the Richland Municipal Code to add the crimes of cyberstalking, criminal mistreatment - fourth degree, and unlawful possession of a legend drug, and the civil infraction of purchase or consumption of liquor by an intoxicated person.

Summary:

The City of Richland has need, from time to time, to amend the Richland Municipal Code (RMC) to promote the health, safety, and general welfare of the citizens of Richland.

Richland shares concurrent jurisdiction with Benton County for the prosecution of misdemeanor and gross misdemeanor offenses within city limits. The City is authorized to pursue criminal prosecution of misdemeanor and gross misdemeanor crimes occurring in the City of Richland only so long as it has adopted an ordinance prohibiting specified conduct and setting a penalty that involves criminal sanction.

The City has already adopted ordinances that authorize prosecution for a number of offenses. At this time, staff recommends adopting additional ordinances so that the City may exercise jurisdiction over the prosecution of said offenses, as opposed to referring the cases to the Benton County Prosecuting Attorney's Office for charging decisions. This will allow the City to exercise greater control over prosecution and sentencing.

By approving Ordinance No. 29-20, the following crimes will be added to Richland's criminal code: cyberstalking; criminal mistreatment - fourth degree; and unlawful possession of a legend drug. Ordinance No. 29-20 also adds the civil infraction of purchase or consumption of liquor by an intoxicated person. Patrol officers in the Richland Police Department identified these violations as a high priority for addition to the RMC. The City Prosecutor was also consulted and concurs with the recommendation.

Staff recommends approval of Ordinance No. 29-20 for second reading and passage.

Fiscal Impact:

None.

Attachments:

I. Ordinance No. 29-20

ORDINANCE NO. 29-20

AN ORDINANCE of the City of Richland amending Richland Municipal Code Title 9: Crime by creating new Sections 9.04.085: Cyberstalking; 9.04.110: Criminal mistreatment – Fourth degree; 9.12.120: Unlawful possession of a legend drug; and 9.24.075: Purchase or consumption of liquor by an intoxicated person.

WHEREAS, the City of Richland has need, from time to time, to amend the Richland Municipal Code (RMC) to promote the health, safety, and general welfare of the citizens of Richland; and

WHEREAS, the City of Richland shares concurrent jurisdiction with Benton County for the prosecution of misdemeanor and gross misdemeanor offenses within city limits; and

WHEREAS, the City is authorized to pursue criminal prosecution of misdemeanor and gross misdemeanor crimes occurring in the City of Richland only so long as the City has adopted an ordinance prohibiting specified conduct and setting a penalty that involves criminal sanction; and

WHEREAS, the City of Richland has determined to adopt ordinances to prohibit conduct that is currently unlawful under state law so that it may exercise jurisdiction over the prosecution of said offenses, as opposed to referring the cases to the Benton County Prosecuting Attorney's Office for charging decisions.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Chapter 9.04 of the Richland Municipal Code, entitled Crimes Against Persons, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 20-11, is hereby amended to read as follows:

Chapter 9.04 CRIMES AGAINST PERSONS

Sections:

- 9.04.010 Simple assault.**
- 9.04.020 Harassment.**
- 9.04.030 Intimidation.**
- 9.04.040 Provoking assault.**
- 9.04.045 Use of force – When allowed.**
- 9.04.050 Harassing telephone calls.**
- 9.04.060 Solicitation of a minor.**
- 9.04.070 Reckless endangerment – Second degree.**
- 9.04.080 Stalking – Penalties.**

9.04.085 Cyberstalking.

9.04.090 Coercion.

9.04.100 Leaving a child in the care of a sex offender.

9.04.110 Criminal Mistreatment – Fourth degree.

9.04.010 Simple assault.

A. No person may intentionally use, or threaten to use by purposeful words or acts, unlawful physical force against the person of another.

B. A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

C. Any defense available to a person charged with the crime of “assault in the fourth degree” under RCW 9A.36.041 shall also be a defense to the crime of simple assault under this section.

D. Any crime charged under this section shall be a gross misdemeanor.

9.04.020 Harassment.

A. It is unlawful for any person, without lawful authority, to knowingly threaten:

1. To cause bodily injury immediately or in the future to the person threatened or to any other person; or

2. To cause physical damage to the property of a person other than the actor; or

3. To subject the person threatened or any other person to physical confinement or restraint; or

4. To maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

B. The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

C. Every person convicted of a violation of the provisions of this section shall be guilty of harassment, a gross misdemeanor.

9.04.030 Intimidation.

A. It is unlawful for any person to carry, exhibit or display any instrument or weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons; provided, however, that this section shall not apply to nor affect:

1. Any act committed by a person while in his place of abode or fixed place of business;
2. Any peace officer;
3. Any person lawfully acting in self-defense or acting in the lawful defense of another;
4. Any person making or assisting in making a lawful arrest for the commission of a felony;
or
5. Any person engaged in military activities authorized by state or federal government.

B. Every person convicted of a violation of the provisions of this section shall be guilty of intimidation, a misdemeanor.

9.04.040 Provoking assault.

It is unlawful for any person to willfully provoke or attempt to provoke, by word, sign or gesture, another person to commit an assault or breach of the peace. Every person convicted of a violation of the provisions of this section shall be guilty of provoking assault, a misdemeanor.

9.04.045 Use of force – When allowed.

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

- A. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;
- B. Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;
- C. Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;
- D. Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;
- E. Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped

and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

F. Whenever used by any person to prevent a mentally ill, mentally incompetent or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority of the restraint or custody of the person.

9.04.050 Harassing telephone calls.

A. It is unlawful for any person, with intent to harass, intimidate, torment or embarrass any other person, to make a telephone call to such other person:

1. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or
2. Use any lewd, lascivious, profane, indecent or obscene words or language, or suggesting the commission of any lewd or lascivious act; or
3. Threaten to inflict injury on the person or property of the person called or any member of his family; or
4. Without purpose of legitimate communication.

B. Any offense committed by use of a telephone as set forth in this section may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. Every person convicted of a violation of the provisions of this section shall be guilty of making harassing telephone calls, a gross misdemeanor.

9.04.060 Solicitation of a minor.

It is unlawful for any person to solicit, entice, or otherwise communicate with a child under the age of 18 years for immoral purposes. Every person convicted of a violation of the provisions of this section shall be guilty of solicitation of a minor, a gross misdemeanor, except if:

- A. The person has previously been convicted under this section or of a felony sexual offense under Chapter 9.68A, 9A.44, or 9A.64 RCW; or
- B. Any other felony sexual offense in this or any other state; or
- C. The person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of electronic communication.

9.04.070 Reckless endangerment – Second degree.

A person is guilty of reckless endangerment in the second degree when he or she recklessly engages in conduct not amounting to reckless endangerment in the first degree as defined by RCW 9A.36.045, but which creates a substantial risk of death or serious physical injury to another person. Reckless endangerment is a gross misdemeanor.

9.04.080 Stalking – Penalties.

A. A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

1. He or she intentionally and repeatedly follows another person to that person's home, school, place of employment, business, or any other location, or follows the person while the person is in transit between locations; and

2. The person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed or of another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances; and

3. The stalker either:

a. Intends to frighten, intimidate, or harass the person being followed; or

b. Knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person;

4. A person who commits the crime of stalking under this subsection (A) is guilty of a gross misdemeanor except under the conditions defined in subsection (E) of this section.

B. It is not a defense to the crime of stalking in this section where:

1. Under subsection (A)(3)(a) of this section the stalker was not given actual notice that the person being followed did not want the stalker to contact or follow the person; or

2. Under subsection (A)(3)(b) of this section the stalker did not intend to frighten, intimidate, or harass the person being followed.

C. It shall be a defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by Chapter 18.165 RCW.

D. Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person.

E. A person who stalks another person is guilty of a gross misdemeanor, except that the person is guilty of a Class C felony if any of the following applies:

1. The stalker has previously been convicted in this state or any other state of any crime of harassment as defined in RMC 9.04.020, of the same victim or members of the victim's family or household member or any person specifically named in a no-contact order or no-harassment order; or
2. The person violates a court order issued pursuant to RMC 9.07.020 or RCW 9A.46.040 protecting the person being stalked; or
3. The stalker has previously been convicted of a gross misdemeanor or felony stalking offense for stalking another person; or
4. The stalker was armed with a deadly weapon as defined in RCW 9.94A.825 while stalking the person; or
5. The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community corrections officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties, or to influence the victim's performance of official duties; or
6. The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

F. Definitions as used in this section:

1. "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
2. "Harasses" means unlawful harassment as defined in RMC 9.04.020 or RCW 10.14.020.
3. "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.
4. "Repeatedly" means on two or more separate occasions.

9.04.085 Cyberstalking.

A. A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

1. Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

2. Anonymously or repeatedly whether or not conversation occurs; or

3. Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

B. Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

C. Cyberstalking is a class C felony if either of the following applies:

1. The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

2. The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

D. Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

E. For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

9.04.090 Coercion.

A. A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

B. "Threat" as used in this section means:

1. To communicate, directly or indirectly, the intent to immediately use force against any person who is present at the time; or

2. Threats as defined in RCW 9A.04.110(27)(a) through (f) as those subsections may be amended from time to time.

3. Coercion is a gross misdemeanor.

9.04.100 Leaving a child in the care of a sex offender.

A. A person is guilty of the crime of leaving a child in the care of a sex offender if the person is (1) the parent of a child; (2) entrusted with the physical custody of a child; or (3) employed to provide to the child the basic necessities of life, and leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, knowing that the person is registered or required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.

B. It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this section, that the defendant must prove by a preponderance of the evidence, that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by a court, the department of corrections, or the department of social and health services in accordance with department policies.

C. Leaving a child in the care of a sex offender is a misdemeanor.

9.04.110 Criminal mistreatment – Fourth degree.

A. A person is guilty of the crime of criminal mistreatment in the fourth degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

1. With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or

2. With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

B. For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

C. Criminal mistreatment in the fourth degree is a misdemeanor.

Section 2. Chapter 9.12 of the Richland Municipal Code, entitled Miscellaneous Crimes, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 40-15, is hereby amended to read as follows:

Chapter 9.12 MISCELLANEOUS CRIMES

Sections:

- 9.12.010 Conspiracy.**
- 9.12.020 Riot.**
- 9.12.030 Failure to disperse.**
- 9.12.040 Unlawful discharge of a laser in the second degree.**
- 9.12.050 *Repealed.***
- 9.12.055 Illegal dumping.**
- 9.12.060 Abandoned refrigerators.**
- 9.12.070 Cold storage lockers.**
- 9.12.080 Hunting.**
- 9.12.090 Tormenting or harassing birds and animals.**
- 9.12.100 *Repealed.***
- 9.12.110 Computer trespass second degree.**
- 9.12.120 Unlawful possession of legend drug.**

9.12.010 Conspiracy.

It is unlawful for any person, with intent that conduct constituting a crime be performed, to agree with one or more persons to engage in or cause the performance of such conduct. Every person who is convicted of a violation of the provisions of this section shall be guilty of conspiracy. When an object of the conspiratorial agreement is a Class C felony, as defined by the laws of the state of Washington, Chapter 9A.28 RCW, conspiracy is a gross misdemeanor. When an object of the conspiratorial agreement is another misdemeanor or gross misdemeanor, conspiracy is a misdemeanor.

9.12.020 Riot.

It is unlawful for any person, acting with three or more persons, to knowingly and unlawfully use or threaten to use force, or in any way participate in the use of such force against any other person or against property. Every person who is convicted of a violation of the provisions of this section shall be guilty of riot, a gross misdemeanor, unless the actor is armed with a deadly weapon, which is a Class C felony under Chapter 9A.84 RCW.

9.12.030 Failure to disperse.

It is unlawful for any person to congregate with a group of three or more other persons at such times as there are acts of conduct within the group which create a substantial risk of causing injury to any person, or substantial harm to property, and to refuse or fail to disperse when ordered to do so by a peace officer engaged in enforcing or executing the law. Every person who is convicted of a violation of the provisions of this section shall be guilty of failure to disperse, a misdemeanor.

9.12.040 Unlawful discharge of a laser in the second degree.

RCW 9A.49.030 is hereby adopted by reference as currently enacted or as hereafter amended or recodified from time to time and shall be given the same force and effect as if set forth herein in full.

9.12.050 Impersonating public officer.

Repealed by Ord. 20-11.

9.12.055 Illegal dumping.

It is unlawful for any person to bury, burn, dump, collect, remove, or in any other manner dispose of or deposit refuse upon any street, alley, public place, or private property within the city other than as provided in Chapter 15.12 RMC; except, that this section shall not be taken to prohibit maintenance of any compost heap upon private property in a manner not constituting a nuisance. Every person who is convicted of a violation of the provisions of this section shall be guilty of illegal dumping, a misdemeanor.

9.12.060 Abandoned refrigerators.

It is unlawful for any person to place, maintain, leave or possess, or to knowingly permit to be placed, maintained, left or possessed, in any place accessible to children, any abandoned, unused or discarded icebox, refrigerator or other like container or receptacle, unless all doors thereon may be readily opened by children from the inside thereof and all locks and locking devices have been removed therefrom. Every person convicted of a violation of the provisions of this section shall be guilty of a misdemeanor.

9.12.070 Cold storage lockers.

A. It is unlawful for any person, either as owner or operator, or as agent for the owner or operator, to maintain or operate any cold storage locker or cold storage room unless the same is equipped with the following:

1. An emergency bell clearly audible to persons on the outside of the cold storage enclosure and operable from the inside of the locker or room. The operating mechanism on the inside of the locker or room shall be clearly posted with the words "emergency bell";
2. Two or more separate electric lights of at least 10 watts each, located on the inside of the locker or room immediately adjacent to the operating mechanism of the emergency bell required in subsection (A)(1) of this section.

B. Every person convicted of a violation of the provisions of this section shall be guilty of a misdemeanor.

9.12.080 Hunting.

It is unlawful for any person to hunt any bird or animal within the city limits of the city of Richland, except in areas of the city that may be designated by resolution of the city council, and during such times as may be so designated. Every person convicted of a violation of the provisions of this section shall be guilty of a misdemeanor.

9.12.090 Tormenting or harassing birds and animals.

It is unlawful for any person to willfully torment or harass any game bird, game animal, or any species of bird or animal protected under the rules or regulations promulgated by the Washington State Game Commission; provided, however, that nothing contained in this section shall apply to birds or animals which are lawfully hunted in areas of the city designated by resolution of the city council during such times as may be so designated. Every person convicted of a violation of this section shall be guilty of a misdemeanor.

9.12.100 Violation of court orders.

Repealed by Ord. 20-11.

9.12.110 Computer trespass second degree.

A. A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another under circumstances not constituting the offense in the first degree.

B. Computer trespass in the second degree is a gross misdemeanor.

9.12.120 RCW Section Adopted – Unlawful possession of a legend drug.

Section 69.41.030 of the Revised Code of Washington pertaining to Possession of legend drug without prescription or order prohibited, as now or hereafter amended, is hereby adopted by reference as a part of this chapter in all respects as though the Section were set forth herein in full.

Section 3. Chapter 9.24 of the Richland Municipal Code, entitled Alcoholic Beverages, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 18-12, is hereby amended to read as follows:

Chapter 9.24 ALCOHOLIC BEVERAGES

Sections:

- 9.24.010 Exercise of police power.**
- 9.24.020 Definitions.**
- 9.24.030 License required to sell.**
- 9.24.040 Acting without necessary license unlawful.**
- 9.24.050 Possession of contraband liquor.**
- 9.24.060 Manufacture – Operating still.**
- 9.24.070 Purchase, possession, or consumption by minors prohibited.**
- 9.24.075 Purchase or consumption of liquor by an intoxicated person.**
- 9.24.080 Other illegal sales.**
- 9.24.090 Procuring liquor for ineligible person prohibited.**
- 9.24.100 Taking orders for liquor prohibited.**
- 9.24.110 Use of false or fraudulent identification.**
- 9.24.120 Public consumption prohibited.**
- 9.24.140 Age of employees.**
- 9.24.150 Inspection.**

9.24.160 Allegation of violation.

9.24.170 Violation – Penalties.

9.24.010 Exercise of police power.

This chapter is in exercise of the police power of the city of Richland as an aid to the enforcement of the liquor control statutes of the state of Washington and shall be liberally construed for that purpose.

9.24.020 Definitions.

The definitions provided in RCW 66.04.010 are hereby adopted by reference as currently enacted or as hereafter amended or recodified from time to time and shall be given the same force and effect as if set forth herein in full.

9.24.030 License required to sell.

A. No person shall offer to sell, or possess or keep with intent to sell, any liquor unless he is duly licensed by the State Liquor Control Board to sell the same at the time and place where sold, offered, possessed or kept, and licensed to sell such liquor to a class of person to which any person to whom he sells or offers to sell belongs.

B. The possession of spirits in a place not licensed to sell spirits but licensed to sell other liquor shall be presumptive evidence that the spirits are kept for the purpose of sale.

C. The possession of liquor by a principal or an agent on premises registered with the Federal District Director of Internal Revenue as a place at which any branch of retail liquor trade is conducted shall be presumptive evidence of intent of such person to sell liquor at such place.

9.24.040 Acting without necessary license unlawful.

It is unlawful for any person to do any act for which a license is required by RCW Title 66 or by any regulation of the board without having such license.

9.24.050 Possession of contraband liquor.

Except as permitted by statute or by the board, no liquor shall be kept or had by any person unless the package containing the liquor has been sealed with the official seal of the board at a time in which the package contained that liquor. This provision shall not apply to liquor manufactured for home consumption or kept for personal use and not for sale.

9.24.060 Manufacture – Operating still.

Except as permitted by statute, no person shall manufacture liquor except for home consumption. No person shall operate any still for the manufacture of liquor.

9.24.070 Purchase, possession, or consumption by minors prohibited.

A. Except in the case of liquor given or permitted to be given to a person under the age of 21 years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or used in connection with

religious services, no person shall give or otherwise supply liquor to any person under the age of 21 years or permit any person under that age to consume liquor on his premises or on any premises under his control.

B. No person under the age of 21 years shall acquire or have in his possession or purchase, drink, or consume liquor, except in the case of liquor given or permitted to be given to such person by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes, or used in connection with religious services.

C. No person under the age of 21 years shall attempt to obtain any liquor contrary to the provisions of this section.

D. It is unlawful for any person under the age of 21 years to be or remain in any public place after having consumed liquor as evidenced by:

1. The odor of intoxicants on the breath; or

2. Observations by the officer through other sense perception; except in the case of liquor given or permitted to be given to a person under the age of 21 years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or used in connection with religious services. "Public place or places" is defined in RCW 66.04.010(35). Any person under the age of 21 years who is found to have consumed liquor shall be presumed to have consumed the same within the city limits of the city of Richland.

9.24.075 Purchase or consumption of liquor by an intoxicated person.

No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board. Any person who violates RMC 9.24.075 shall be guilty of an infraction as provided in RMC 66.44.200.

9.24.080 Other illegal sales.

No person shall sell liquor to any person apparently intoxicated.

9.24.090 Procuring liquor for ineligible person prohibited.

Except in the case of liquor administered by a physician or dentist or sold upon prescription in accordance with RCW Title 66, no person shall procure, supply, or assist directly or indirectly in procuring or supplying liquor for or to anyone whose right to purchase liquor is suspended or has been cancelled or who for any other reason is forbidden by law to purchase liquor.

9.24.100 Taking orders for liquor prohibited.

Except as provided in RCW 66.26.050, no person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as agent for the purchase or sale of liquor.

9.24.110 Use of false or fraudulent identification.

No person shall use or present any false, forged, or counterfeited identification or other papers or things or any identification papers issued to identify another person inducing any other person to sell any liquor to him.

9.24.120 Public consumption prohibited.

Except as permitted by RCW Title 66 and this chapter and any amendments hereof, no person shall in any public place open any package containing liquor or consume liquor, or break any seal used by the board to seal a container of liquor. Any person who violates any provision of RMC 9.24.120 shall be guilty of an infraction as provided in RMC 66.44.100.

9.24.140 Age of employees.

RCW 66.20.300(2) is hereby adopted by reference as currently enacted or as hereafter amended or recodified from time to time and shall be given the same force and effect as if set forth herein in full.

9.24.150 Inspection.

All licensed premises shall at all times be open to inspection by any authorized police officer.

9.24.160 Allegation of violation.

In describing any offense under this chapter, it shall be sufficient to state the offense in the words of this chapter or in any words of like effect; no exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense, need be specified or negated in the complaint, although it may be provided by the defendant; if it is specified or negated in the complaint, it shall be treated as surplusage.

In describing in any complaint, summons, warrant, or other process or legal papers any offense under this chapter respecting sale, possession, consumption, purchase, or disposition of liquor, it shall be sufficient to state the sale, possession, consumption, purchase, or disposition without stating the name or kind of such liquor, or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, possessed, consumed, purchased, or disposed of, except in the case of offenses where the quantity is essential, and in such case it shall be sufficient to allege the sale or disposal of more or less than the quantity, as the case may be.

9.24.170 Violation – Penalties.

It is unlawful for any person to violate any provision of this chapter. Any person violating any provisions of this chapter shall be guilty of a misdemeanor. Any person violating any provisions of RMC 9.24.070(A) shall be guilty of a gross misdemeanor.

Section 4. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 5. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 6. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: October 11, 2020



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Ordinance No. 30-20, Amending Richland Municipal Code Section 12.04.100 related to Driveways in the Industrial Districts

Department:
Public Works

Ordinance/Resolution Number:
30-20

Document Type:
Ordinance

Recommended Motion:

Give second reading and passage to Ordinance No. 30-20, amending Richland Municipal Code Section 12.04.100 related to driveways in the industrial districts.

Summary:

From time to time, the City has need to update the Richland Municipal Code (RMC) to provide clarity and address emerging issues. Chapter 12.04 RMC regulates the placement and design of driveways connecting private property to public streets.

The City has received a variance request for development in the Horn Rapids Industrial Park to install a driveway wider than code allows. Wider driveways in this area are necessary due to the size and turning radius of vehicles frequenting the properties.

There are good reasons to allow wider driveways in industrial areas, and establishing an industrial driveway width standard in the municipal code will allow evaluation of sites to serve the needs of the industrial park.

Staff recommends approval of Ordinance No. 30-20 for second reading and passage.

Fiscal Impact:

None.

Attachments:

- I. Ordinance No. 30-20

ORDINANCE NO. 30-20

AN ORDINANCE of the City of Richland amending Richland Municipal Code Section 12.04.100 related to width of driveways in industrial districts.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code (RMC) to provide clarity and address emerging issues; and

WHEREAS, RMC Section 12.04.100 addresses width of driveways, but does not address industrial driveway widths; and

WHEREAS, a developer in the Horn Rapids Industrial Park has submitted a variance request to install a driveway wider than currently allowed under the RMC; and

WHEREAS, establishing an industrial driveway width standard will allow evaluation of sites to serve the needs of the industrial park.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 12.04.100, entitled Width of driveways – Nonresidential – Exceptions, as enacted by Ordinance No. 166, and last amended by Ordinance No. 28-05, is hereby amended as follows:

12.04.100 Width of driveways – Nonresidential – Exceptions.

The public works director may issue a permit for driveways deviating from the standards set forth herein, provided the safety of pedestrians and motorists is not jeopardized or traffic flow is not impaired by the deviation. The public works director may issue a permit for the following deviations:

A. To allow a residential type driveway constructed to nonresidential width standards where the number of parking spaces required in RMC 23.54.020 is 20 or less and the anticipated peak hour traffic and trip generation can be shown through standard traffic engineering practices to be 40 vehicles or less. Peak hour traffic shall be defined as the combined number of vehicles entering and exiting a piece of property within the busiest 60 minutes on the busiest day of the week.

B. If the parking and peak hour traffic conditions in subsection (A) of this section are met and the physical boundaries and configuration of the property makes the construction of the standard width or curb radius impractical, the width excluding the radius of the curb return for nonresidential driveways and the transition for residential driveways may be reduced to 30 feet. The radius of the curb returns and any modifications in the construction of the curb section to improve access shall be determined by the public works director but in no case shall the radius be less than 10 feet. The driveway width for secondary driveways on nonarterial streets, where in the opinion of the public works director a wider driveway cannot be constructed, may be reduced to 24 feet.

- C. A two-way driveway may be widened from 36 feet to a maximum of 60 feet.
- D. A one-way driveway may be widened from 15 feet to a maximum of 20 feet.
- E. Delete the concrete curb returns on streets without curb and gutters and in which there is no future requirement for curbs and gutters on the street.

F. In the industrial zoning districts, the driveway width may be widened to support large truck traffic as follows, provided that the total nominal width of all driveways on a street for any one ownership shall not exceed 40% of the property frontage:

1. A one-way driveway may be widened to a maximum of 40 feet.

2. A two-way driveway may be widened to a maximum of 100 feet.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: October 11, 2020



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 31-20, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transport

Department:
City Attorney

Ordinance/Resolution Number:
31-20

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 31-20, amending Richland Municipal Code Section 13.06.330 related to billing for ambulance transport.

Summary:

The City has need, from time to time, to update the Richland Municipal Code (RMC) to eliminate ambiguities.

On April 17, 2012, Richland City Council approved Ordinance No. 12-12 with the intent to increase the ambulance base transport fee for Richland residents from \$608 to \$660, to increase the non-resident ambulance base transport fee from \$912 to \$990, and to decrease the mileage rate from \$10.10 per mile to \$10.00 per mile. The rates referenced in Ordinance No. 12-12 have been consistently charged by the City's ambulance utility since adoption of Ordinance No. 12-12.

While developing a policy for indigent ambulance transport, staff recently discovered that Ordinance No. 12-12 failed to codify these rates in Title 13 of the Richland Municipal Code. Therefore, this housekeeping amendment is necessary to codify the ambulance transport rates in Title 13 of the Richland Municipal Code.

Staff recommends approval of Ordinance No. 31-20 for second reading and passage.

Fiscal Impact:

None.

Attachments:

1. Ordinance No. 31-20
2. Ordinance No. 12-12 (for reference only)

ORDINANCE NO. 31-20

AN ORDINANCE of the City of Richland amending Richland Municipal Code Section 13.06.330 related to billing for ambulance transport.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code (RMC) to eliminate ambiguities; and

WHEREAS, when Ordinance No. 12-12 was approved on April 17, 2012, the Richland City Council intended to increase the ambulance base transport fee for Richland residents from \$608 to \$660, to increase the non-resident ambulance base transport fee from \$912 to \$990, and to decrease the mileage rate from \$10.10 per mile to \$10.00 per mile; and

WHEREAS, the rates referenced in Ordinance No. 12-12 have been consistently charged by the City's ambulance utility since adoption of Ordinance No. 12-12; and

WHEREAS, Ordinance No. 12-12 failed to codify these rates in Title 13 of the Richland Municipal Code, thereby requiring a housekeeping amendment.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 13.06.330, entitled Billing for ambulance transports, as first enacted by Ordinance No. 28-06, and last amended by Ordinance No. 12-12, is hereby amended to read as follows:

13.06.330 Billing for ambulance transports.

A. Each person who is transported by the city's EMS program shall be billed by the city at a rate of \$660, ~~the rates established in this chapter~~, provided the patient is a city resident or is employed at (and transported from) a place of business within the city and the patient:

1. Supplies the city with all requested information and documentation including, but not limited to, insurance information and medical records relative to billing for the ambulance service; and

2. Assigns to the city the patient's right to receive payment from all applicable third-party payers.

B. A patient who is not a city resident and is not employed at and transported from a place of business within the city shall be subject to a 50 percent surcharge on such transport services.

C. A mileage rate of \$10.00 per mile will also be charged, regardless of resident or non-resident status.

~~C~~D. Reciprocity. The ambulance service shall be provided within the city's ambulance response and mutual aid areas at no additional cost to any resident of the cities of Pasco and Kennewick ~~that~~ who resides:

1. In a household that pays a charge similar to the utility charge; and
2. In a city that provides medical and ambulance services within its ambulance response and mutual aid areas to Richland residents at no additional cost.

~~D~~E. The city shall have reciprocity with each of these cities unless they cease to have an ambulance utility or withdraw from the reciprocal agreement.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Date Published: October 11, 2020

ORDINANCE NO. 12-12

AN ORDINANCE OF THE CITY OF RICHLAND
Amending Title 13: Medical and Ambulance Service Utility of
the Richland Municipal Code regarding Ambulance Utility
Rates.

WHEREAS, City Council approved the amendment of Title 13: Medical and Ambulance Service Utility with the passage of Ordinance 28-06 on August 15, 2006, to reflect a monthly utility rate to \$3.16 for all users and ambulance transport charges of \$608 for resident and \$912 for non-resident and \$10.10 per mile; and

WHEREAS, the monthly service fee for operation of the Utility shall be established based upon cost of regulating ambulance services and the cost of providing the rate Emergency Medical Services (EMS) program as determined by a cost-of-service study done pursuant to RCW 35.21-766(3); and

WHEREAS, to provide funding for the ambulance service and meet the needs of increased costs, the monthly ambulance utility rate needs to increase from \$3.16 to \$5.49 monthly for all users; and

WHEREAS, the ambulance base transport fee needs to increase from \$608 for Richland residents to \$660, increase non-resident fee from \$912 to \$990 and decrease mileage rates from \$10.10 per mile to \$10.00 per mile; and

WHEREAS, all adjustments to the ambulance utility rates will be effective June 1, 2012.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Richland as follows:

Section 1. Section 13.06.400 of the Richland Municipal Code Title 13: Medical and Ambulance Service Utility, as enacted by Ordinance 28-06, is hereby amended to read as follows:

13.06.400 Charges Established

In accordance with the rate study presented to the City Council on March 27, 2012, ~~July 11, 2006~~, the base rates and fees for the ambulance utility shall be as follows effective June 1, 2012:

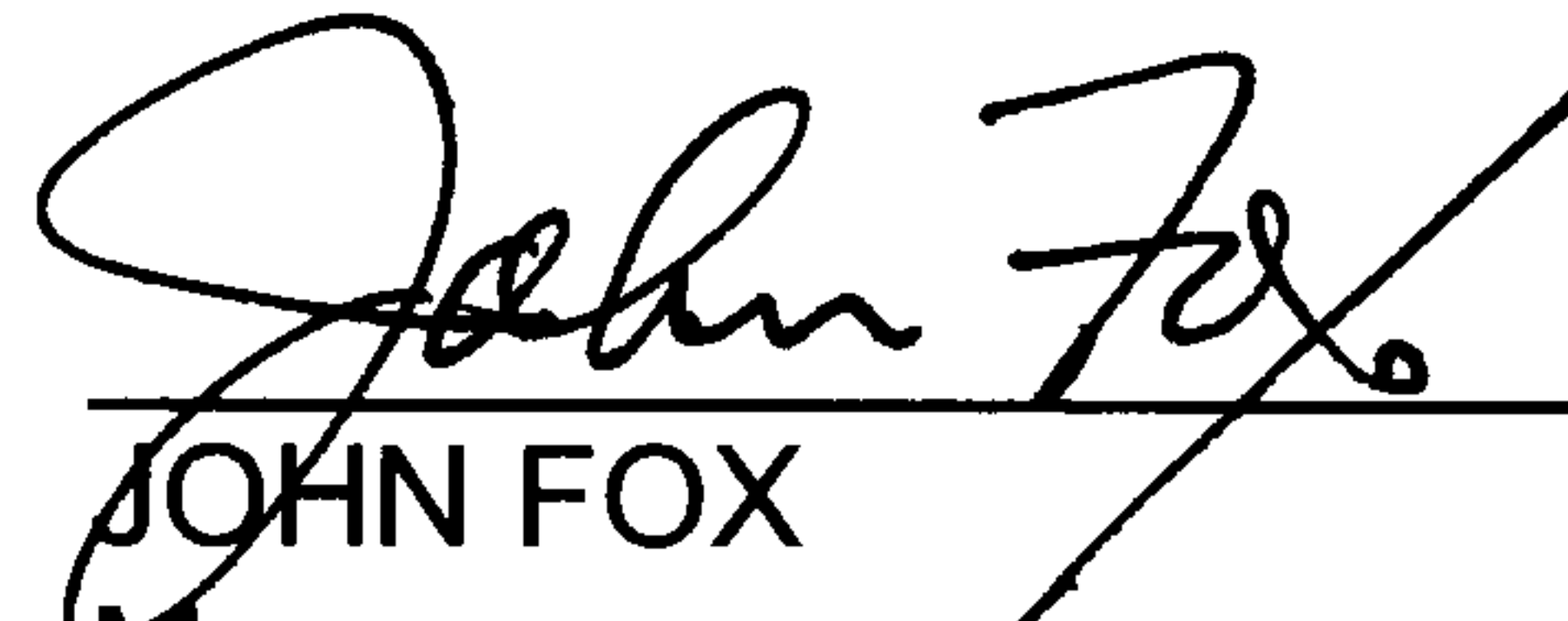
User Classification	Rate
Residential	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per unit
Multi Family Residences	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per unit
Adult Family Homes*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility
Assisted Living Facilities*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility
24-Hour Nursing Facilities*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility
Group Homes*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility

User Classification	Rate
Physicians Clinics*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility
Schools*	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per facility
Commercial/Business	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per unit
City Public Areas	\$3.16 \$5.49 per month/ \$37.92 65.88 per year – per parcel or area

* The annual demand allocation is based upon the overall utilization percentage of each individual unit within the same classification. [Ord. 28-06].

Section 2. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

PASSED by the City Council of the City of Richland, at a regular meeting on the 17th of April, 2012.


JOHN FOX
Mayor

ATTEST:


MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:


THOMAS O. LAMPSON
City Attorney

Date Published: April 22, 2012



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Resolution No. 134-20, Authorizing Relinquishment of a Portion of a Utility Easement at 1375 Kensington Way

Department:
Energy Services

Ordinance/Resolution Number:
134-20

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 134-20, authorizing the City Manager to sign and execute all documents necessary to relinquish a portion of a public utility easement at 1375 Kensington Way.

Summary:

The property owner at 1375 Kensington Way has requested that a portion of an electric utility easement be relinquished to enable the construction of a shed. Staff has evaluated the request and determined the portion of the easement in question is no longer needed because the underground power cable is installed outside of the area recommended for relinquishment.

RCW 35.94.040 allows for the disposal of surplus property originally acquired for utility purposes. A public hearing was held on October 6, 2020 to take public testimony regarding this surplus action.

Barring any compelling testimony to the contrary, staff recommends adoption of Resolution No. 134-20.

Fiscal Impact:

Minor staff time is needed to complete the relinquishment. The requesting parties will cover the costs of document recording.

Attachments:

- I. Resolution No. 134-20

RESOLUTION NO. 134-20

A RESOLUTION of the City of Richland declaring surplus a certain portion of public utility easement located within 1375 Kensington Way.

WHEREAS, property owners Dennis M. & Lana E. Shepherd have requested a certain public utility easement be relinquished because a shed was built within the existing easement without a building permit; and

WHEREAS, the portion of the easement sought to be relinquished, as depicted by hatching on **Exhibit A**, is no longer needed for municipal purposes because the utility line does not fill the entire easement corridor; and

WHEREAS, RCW 35.94.040 provides for the disposal of surplus property originally obtained for public utility purposes; and

WHEREAS, on September 27, 2020, notice was published that a public hearing would be held on October 6, 2020 to take public testimony regarding this surplus action.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the portion of existing easement sought to be relinquished, originally acquired for utility purposes and described as follows, is surplus to the City's needs:

A portion of Lot 7, of the Plat of Brookshire Estates – Division 7 as recorded in Volume 15 of Plats, at Page 455 records of Benton County, Washington. More particularly described as follows:

That portion of a public utility easement dedicated to the City of Richland and lying within Lot 7 (1375 Kensington Way), as depicted by hatching on **Exhibit A**.

BE IT FURTHER RESOLVED that the consideration in support of this relinquishment, which covers the City's administrative processing fees, shall be paid by the applicant.

BE IT FURTHER RESOLVED that the City Manager of the City of Richland is authorized to sign all documents necessary to release the City's interest in the specific portion of public utility easement depicted by hatching on **Exhibit A** and deliver the same upon payment.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

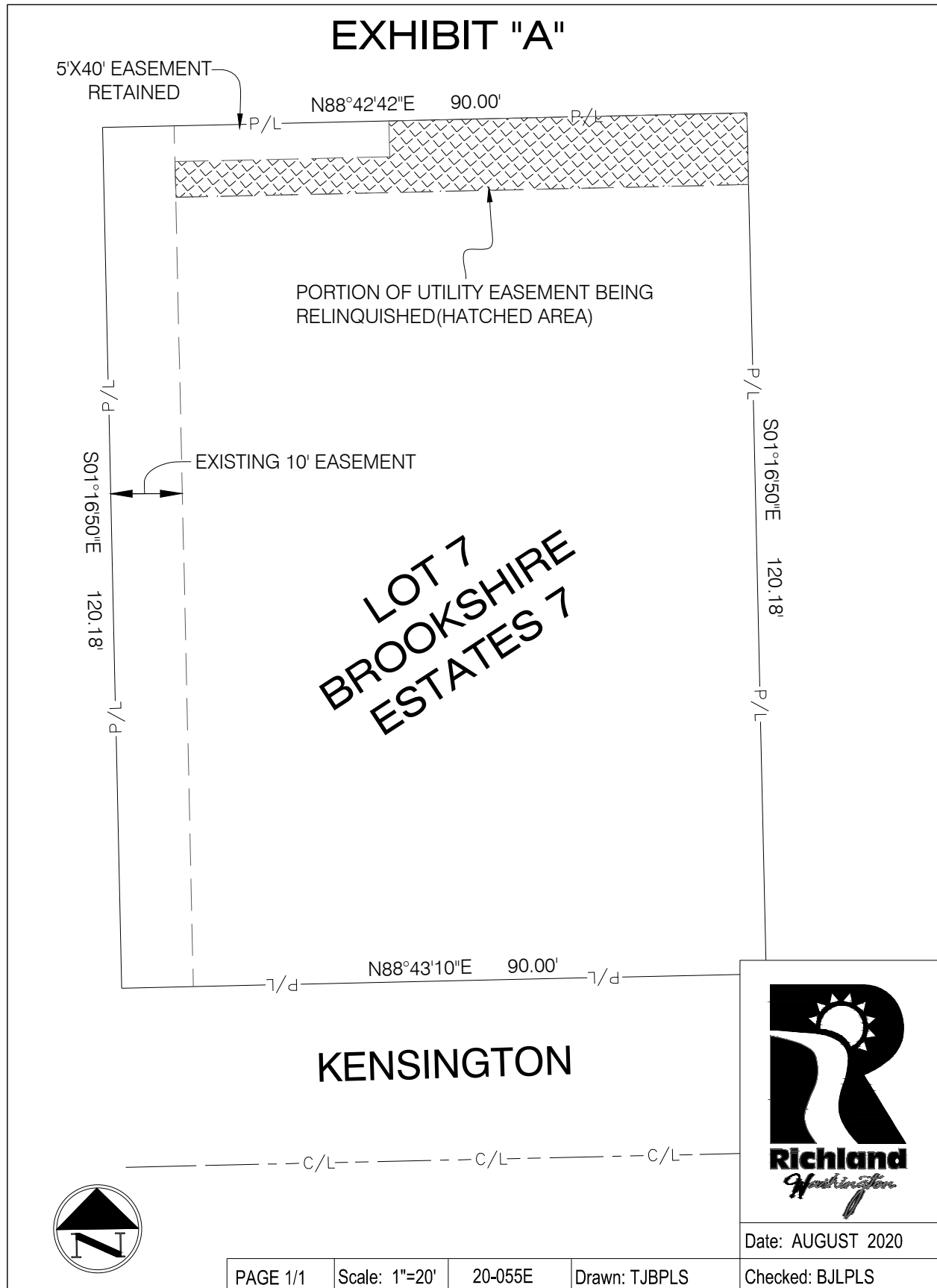
Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Core Focus Area 4 - Manage our Natural Resources

Subject:

Resolution No. 135-20, Approving the 2021 Shoreline Master Program Periodic Review Public Participation and Work Plan

Department:

Development Services

Ordinance/Resolution Number:

135-20

Document Type:

Resolution

Recommended Motion:

Adopt Resolution No. 135-20, approving the 2021 Shoreline Master Plan Public Participation and Work Plan.

Summary:

The Shoreline Management Act requires each city and county to review and, if necessary, revise its Shoreline Master Program at least once every eight (8) years. The legislature set a staggered schedule that alternates with similar reviews under the Growth Management Act. The Washington State Department of Ecology provides guidance and a checklist of changes that must be made.

The City hired the planning, design, and engineering firm AHBL to review the City's current Shoreline Master Program against the checklist and provide the City with a list of required and recommended changes. Along with drafting the proposed changes, the City now needs to establish an approved public participation and work plan indicating how the public will be able to participate in the update process.

Staff prepared the attached Periodic Review Public Participation and Work Plan, which was reviewed and favorably recommended by the Planning Commission.

Staff recommends adoption of Resolution No. 135-20.

Fiscal Impact:

None.

Attachments:

- I. Resolution No. 135-20

RESOLUTION NO. 135-20

A RESOLUTION of the City of Richland adopting the City of Richland's 2021 Shoreline Master Program *Periodic Review Public Participation and Work Plan*.

WHEREAS, on October 21, 2014, Richland City Council, through Ordinance No. 25-14, adopted the City's latest version of the City of Richland Shoreline Master Program; and

WHEREAS, on February 20, 2018, through Ordinance No. 12-18, Richland City Council took final legislative action to formally adopt the Department of Ecology's recommended and required changes to Richland's Shoreline Master Program, and to correct a number of scrivener's errors subsequently identified in Ordinance No. 25-14; and

WHEREAS, RCW 90.58.080(4) of the Shoreline Management Act (SMA) requires the City of Richland to take legislative action to review and update its Shoreline Master Program by June 30, 2021; and

WHEREAS, to assist SMA planning jurisdictions, the Washington State Department of Ecology ("Ecology"), which administers the SMA, provides compliance "checklists" for agencies to review against their local shoreline master programs; and

WHEREAS, the City of Richland Development Services Department hired AHBL to review the City's Shoreline Master Program for compliance with the various provisions of the SMA based on the "checklists" provided by Ecology; and

WHEREAS, cities are required to establish a program that identifies procedures and schedules for the public to participate in the periodic shoreline master program update process; and

WHEREAS, Ecology recommends that cities publish a complete public participation plan with a schedule at the beginning of the update process; and

WHEREAS, the Richland Planning Commission reviewed the proposed public participation plan and schedule on September 23, 2020, and recommended approval of the plan to the Richland City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the *Periodic Review Public Participation and Work Plan* shown in **Exhibit A** for the 2021 Shoreline Master Program periodic review is hereby adopted.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

City of Richland Shoreline Master Program Periodic Review Public Participation and Work Plan

Introduction

The City of Richland is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA), RCW 90.58.080(4). The SMA requires each SMP be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other City of Richland plans and regulations, and is responsive to changed circumstances, new information and improved data.

A Public Participation Plan is required to describe how the City of Richland will encourage early and continuous public participation throughout the process of reviewing the SMP.

This Public Participation Plan describes the steps that the City of Richland will take to provide opportunities for public engagement and public comment, as well as City of Richland contact information and web addresses. This plan is in addition to any other minimum requirements for public participation required by Richland Municipal Code Sections 19 and 26. This plan is a working document and will be adjusted as needed to provide for the greatest and broadest public participation.

Public Participation Goals

- Provide interested parties with timely information, an understanding of the process, and multiple opportunities to review and comment on proposed amendments to the SMP.
- Actively solicit information from citizens, property owners and stakeholders about their concerns, questions and priorities for the Periodic Review process.
- Encourage interested parties to informally review and comment on proposed changes to the SMP throughout the process and provide those comments to decision makers.
- Provide forums for formal public input at project milestones prior to decision-making by local officials.
- Consult and consider recommendations from neighboring jurisdictions, federal and state agencies, and Native American tribes.

Public Participation Opportunities

The City of Richland is committed to providing multiple opportunities for public participation throughout the process. The City of Richland will use a variety of communication tools to inform the public and encourage their participation, including the following:

Website

The City of Richland's website will include a Periodic Review webpage where interested parties can access status updates, draft documents, official notices, minutes and other project information. The webpage will be the primary repository of all information related to the Periodic Review process. The page will include who to contact for more information and an email link for questions and comments.

Open House (In-Person or Virtual)

The City of Richland will initiate the Periodic Review with a community open house. Public comments received during the Open House will be posted on the Periodic Review webpage.

Notice Mailing list

An email list of interested parties will be created, advertised and maintained by the City. The list will be used to notify interested parties regarding Periodic Review progress and participation opportunities. Interested parties will be added to the list by contacting the Planning Department.

Comment

Interested parties will be encouraged to provide comments to the City Planning Department by letter or email. All comments will be provided to the Planning Commission and City Council as part of their review process. The Periodic Review webpage will be the central repository for information under consideration. Documents will be available for review on the Period Review webpage and at the Richland Planning Department. Hard copies will be provided at the established copying cost.

Planning Commission

The Planning Commission will be the primary forum for detailed review and recommendations to the City Council. Interested parties are encouraged to attend and provide comments during the Planning Commission deliberation and/or City Council public hearings. Official notices will be published as established in City of Richland policy.

List of Stakeholders

The City of Richland will engage the following stakeholders:

General public:

- City residents
- Local businesses and employees
- Park users
- Local boaters and recreationists

Property owners:

- Residential property owners
- Businesses
- Farmers
- Governmental agencies

Business organizations, environmental groups, and other non-governmental organizations:

- Home Builders Association of Tri-Cities
- Tri-City Regional Chamber of Commerce
- Futurewise
- Friends of Badger
- Tapteal Greenway Association
- Lower Columbia Basin Audobon Society

Tribes that own property and/or have rights to usual and accustomed places and natural resources:

- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Umatilla Indian Reservation

Government Agencies:

- Yakima Basin Clean Water Partnership
- US Bureau of Reclamation
- Washington State Department of Fish and Wildlife
- Washington State Department of Transportation
- Washington State Department of Natural Resources

- Washington State Department of Ecology
- Army Corps of Engineers
- Federal Emergency Management Agency
- United States Forest Service
- National Oceanic and Atmospheric Administration Fisheries Service
- Neighboring jurisdictions (e.g., City of West Richland, City of Kennewick and Benton County, especially their shoreline planners)
- City of Richland Parks and Recreation Department
- City of Richland Fire Department

Utilities and Transportation:

- City of Richland Public Works Department
- City of Richland Energy Services Department
- Columbia Irrigation District
- Kennewick Irrigation District
- Badger Mountain Irrigation District
- Bonneville Power Administration
- Cascade Natural Gas
- Port of Benton

Media:

- Tri-City Herald Newspaper (Kennewick)
- KFAE 89.1 FM, KONA 610 AM, and KFLD 870 AM
- KVEW ABC (Kennewick), KNDO NBC (Yakima), and KEPR CBS (Pasco)

Work Plan

The following is a general timeline including anticipated public participation opportunities. The City of Richland Planning Department will coordinate with the Department of Ecology throughout the process. A detailed timeline will be posted on the Periodic Review webpage. All future dates in the following timeline are tentative and subject to change.

TASK	TENTATIVE DATE
Public Outreach Events	October – November 2020
SMP Document Preparation	December - 2020
Formal Public Review and Circulation of the 2021 SMP Amendments	January – February 2021
Planning Commission Workshops & Public Hearings	March – April 2021
City Council Public Hearing(s) & Adoption	May – June 2021

Public Comment Periods and Hearings

The Planning Commission will conduct a public comment period and at least one public hearing to solicit input on the Periodic Review. The City Council will hold one public hearing before final adoption.

The Richland Planning Department will coordinate with the Department of Ecology on public notification of comment periods and hearings to take advantage of Ecology's optional SMP amendment process that allows for a combined state-local comment period (WAC 173-26-104).

Public notice of all hearings will state who is holding the comment period and/or hearing, the date and time, and the location of any public hearing. Notices will be published per official policy and comply with all other legal requirements such as the Americans with Disabilities Act. A notice will be sent to the email list (above) and the Department of Ecology.



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Resolution No. 136-20, Setting a Date for a Public Hearing to Consider the Zinsli Annexation Petition

Department:

Development Services

Ordinance/Resolution Number:

136-20

Document Type:

Resolution

Recommended Motion:

Adopt Resolution No. 136-20, setting the date of December 1, 2020 for a public hearing on the Zinsli annexation petition.

Summary:

Prior to holding a public hearing on the proposed annexation of approximately 8.52 acres of land into the city limits, City Council must first adopt a resolution formally setting the date for the public hearing to occur.

Public hearings for annexation requests shall be heard no less than 75 days from the date the City Clerk mails a certified letter consisting of a Notification of Annexation to various local and state entities. Establishing the public hearing date of December 1, 2020 provides the Richland City Clerk with adequate time to distribute the public notice while meeting the 75-day requirement.

Staff recommends adoption of Resolution No. 136-20.

Fiscal Impact:

None.

Attachments:

1. Resolution No. 136-20
2. Vicinity Map

RESOLUTION NO. 136-20

A RESOLUTION of the City of Richland setting a date for a public hearing to consider the proposed annexation of approximately 8.52 acres located at 771 Shockley Road in Section 27, Township 9 North, Range 28 East W.M., Benton County, Washington.

WHEREAS, a petition for annexation to the City of Richland has been received from the owner representing one hundred percent (100%) of valuation for the annexation of the described property, attached hereto as **Exhibit A**; and

WHEREAS, RCW 35.13.130 sets forth requirements that an annexation petition must be signed by the owners of not less than sixty percent (60%) in value, according to the assessed valuation for general taxation, of the property for which annexation is petitioned; and

WHEREAS, such petition was duly certified by the Benton County Auditor on September 8, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the regularly scheduled City Council meeting on **December 1, 2020** is hereby established as the date on which Council will conduct a public hearing to consider the annexation petition.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Exhibit A

Zinsli Annexation Legal Description

Parcel 2 of Record of Survey 5204

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SUBDIVISION WHICH IS SOUTH 89°52'30" EAST 748 FEET FROM THE NORTHWEST CORNER THEREOF, THENCE SOUTH 1'25' WEST PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION 1060.50 FEET. THENCE NORTH 38°25' EAST 276 FEET. THENCE NORTH 57°07' EAST 166.10 FEET. THENCE NORTH 39°02' EAST 293.80 FEET. THENCE NORTH 1°31'25" EAST 524.63 FEET TO A POINT ON THE NORTH LINE OF SAID SUBDIVISION. THENCE NORTH 89°52'30" WEST ALONG SAID NORTH LINE 483.75 FEET TO THE POINT OF BEGINNING.

EXCEPT PORTION CONVEYED TO THE CITY OF RICHLAND FOR ROAD PURPOSES UNDER AUDITOR'S FILE NO. 2003-013621.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 09 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF SAID SECTION 27 THENCE NORTH 89°14'51" EAST ALONG THE NORTHERLY LINE OF SAID SECTION 748.00 FEET TO THE NORTHWEST CORNER OF THE PARCEL AS DESCRIBED UNDER AUDITORS FILE NUMBER 680225; THENCE SOUTH 00°32'21" WEST ALONG THE WESTERLY LINE OF SAID PARCEL 30.01 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SHOCKLEY ROAD; THENCE NORTH 89°14'51" EAST ALONG SAID LINE 485.43 FEET TO THE EASTERN LINE OF SAID PARCEL; THENCE SOUTH 00°45'09" WEST ALONG SAID LINE 493.62 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTH 38°09'21" WEST ALONG SAID LINE 66.33 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID LINE SOUTH 38°09'21" WEST 41.00 FEET;
THENCE SOUTH 51°50'39" EAST 15.00 FEET;

CONTAINS 8.48 ACRES.

TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS, OF RECORD AND IN VIEW.

Community
Map

Item: Annexation

Applicant: Robert & Sharon Zinsli

File #: ANX2019-101





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 3 - Increase Economic Vitality

Subject:

Resolution No. 137-20, Renewing the Temporary Waiver Authority Granted by Resolution No. 102-20

Department:

Development Services

Ordinance/Resolution Number:

137-20

Document Type:

Resolution

Recommended Motion:

Adopt Resolution No. 137-20, renewing the temporary waiver authority granted by Resolution No. 102-20.

Summary:

On July 7, 2020, Richland City Council adopted Resolution No. 102-20 authorizing the City Manager to approve special use waivers related to parking, sidewalk use, and erection of temporary structures on commercial and city-owned property for conducting business outdoors. Council's adoption of Resolution No. 102-20 was in support of local businesses impacted by COVID-19 restrictions on indoor business activities.

By its terms, the authority granted by Resolution No. 102-20 expired 60 days after execution. While the interest in waivers has slowed, the opportunity to apply for a waiver is still beneficial since businesses continue to operate in a limited capacity at 25% indoor service. Staff recommends renewing the authority of Resolution No. 102-20 to and through December 31, 2020.

Staff recommends adoption of Resolution No. 137-20.

Fiscal Impact:

None

Attachments:

I. Resolution No. 137-20

RESOLUTION NO. 137-20

A RESOLUTION of the City of Richland renewing the temporary waiver authority granted by Resolution No. 102-20.

WHEREAS, on July 7, 2020, Richland City Council approved Resolution No. 102-20, delegating authority to the City Manager to issue temporary waivers of restrictions in the Richland Municipal Code that would impose limits on the use of outdoor portions of commercial or city-owned property or right-of-way for dining or service, including provisions that prohibit the use of parking spaces for such activity, and local provisions that restrict the ability of local businesses to erect temporary shade structures to support such activity; and

WHEREAS, the authority granted pursuant to Resolution No. 102-20 was for sixty (60) days from the date of approval unless terminated earlier by action of the City Council; and

WHEREAS, by the terms of Resolution No. 102-20, the authority to issue temporary waivers ended on September 5, 2020; and

WHEREAS, Resolution No. 102-20 provides for renewal of the authority granted by Resolution No. 102-20 upon Council action; and

WHEREAS, the City of Richland remains in a modified Phase 1 of Washington's *Safe Start* reopening plan, which limits indoor occupancy for businesses; and

WHEREAS, the City's continued issuance of waivers will support business stabilization by allowing local businesses to utilize outdoor spaces for business activities.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the authority granted by Resolution No. 102-20 is hereby renewed to and through December 31, 2020 unless terminated earlier by action of the City Council.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Resolution No. 138-20, Authorizing Relinquishment of a Portion of Utility Easements at 2705 Fermi Drive

Department:
Public Works

Ordinance/Resolution Number:
138-20

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 138-20, authorizing the relinquishment of a portion of utility easements at 2705 Fermi Drive.

Summary:

The Port of Benton and Richland Storage Partners LLC have requested certain public utility easements be relinquished within their property to accommodate new development. The utilities have been abandoned in the easements and relocated within the adjacent roadways of Curie Street and Fermi Drive. For this reason, the requested easements are no longer needed for municipal purposes.

RCW 35.94.040 provides for the disposal of surplus property originally obtained for public utility purposes. As required by state law, a public hearing was held on October 6, 2020 to allow public testimony on the proposed action. Barring any compelling testimony to the contrary, staff recommends adoption of Resolution No. 138-20.

Fiscal Impact:

Minor staff time is needed to complete the relinquishment. The requesting parties will cover the costs of document recording.

Attachments:

- I. Resolution No. 138-20

RESOLUTION NO. 138-20

A RESOLUTION of the City of Richland declaring surplus certain portions of public utility easements lying within 2705 Fermi Drive.

WHEREAS, the property owners, Port of Benton and Richland Storage Partners LLC, have requested certain public utility easements be relinquished to accommodate new development; and

WHEREAS, the utilities have been abandoned in the easements and relocated within adjacent roadways (Curie Street and Fermi Drive); and

WHEREAS, the easements as depicted on **Exhibit A** are no longer needed for municipal purposes because the corridors have been abandoned or utilities have been relocated into adjacent access and utility easements; and

WHEREAS, RCW 35.94.040 provides for the disposal of surplus property originally obtained for public utility purposes; and

WHEREAS, on October 4, 2020, notice was published that a public hearing would be held on October 6, 2020 to take public testimony regarding this surplus action.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the existing easements, originally acquired for utility purposes and described as follows, are surplus to the City's needs:

Located within Southwest Quarter of Section 23, Township 10 North, Range 28 East, W.M., City of Richland, Benton County, Washington. Described as follows:

Those portions of said easements lying within Lots 1 and 2 of Short Plat 3612 (2705 Fermi Drive) and as shown by dashed lines on **Exhibit A**.

BE IT FURTHER RESOLVED that the consideration in support of this relinquishment, which covers the City's administrative processing fees, shall be paid by the applicant.

BE IT FURTHER RESOLVED that the City Manager of the City of Richland is authorized to sign all documents necessary to release the City's interest in the specific portions of the public utility easements as depicted on **Exhibit A** and deliver the same upon payment.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

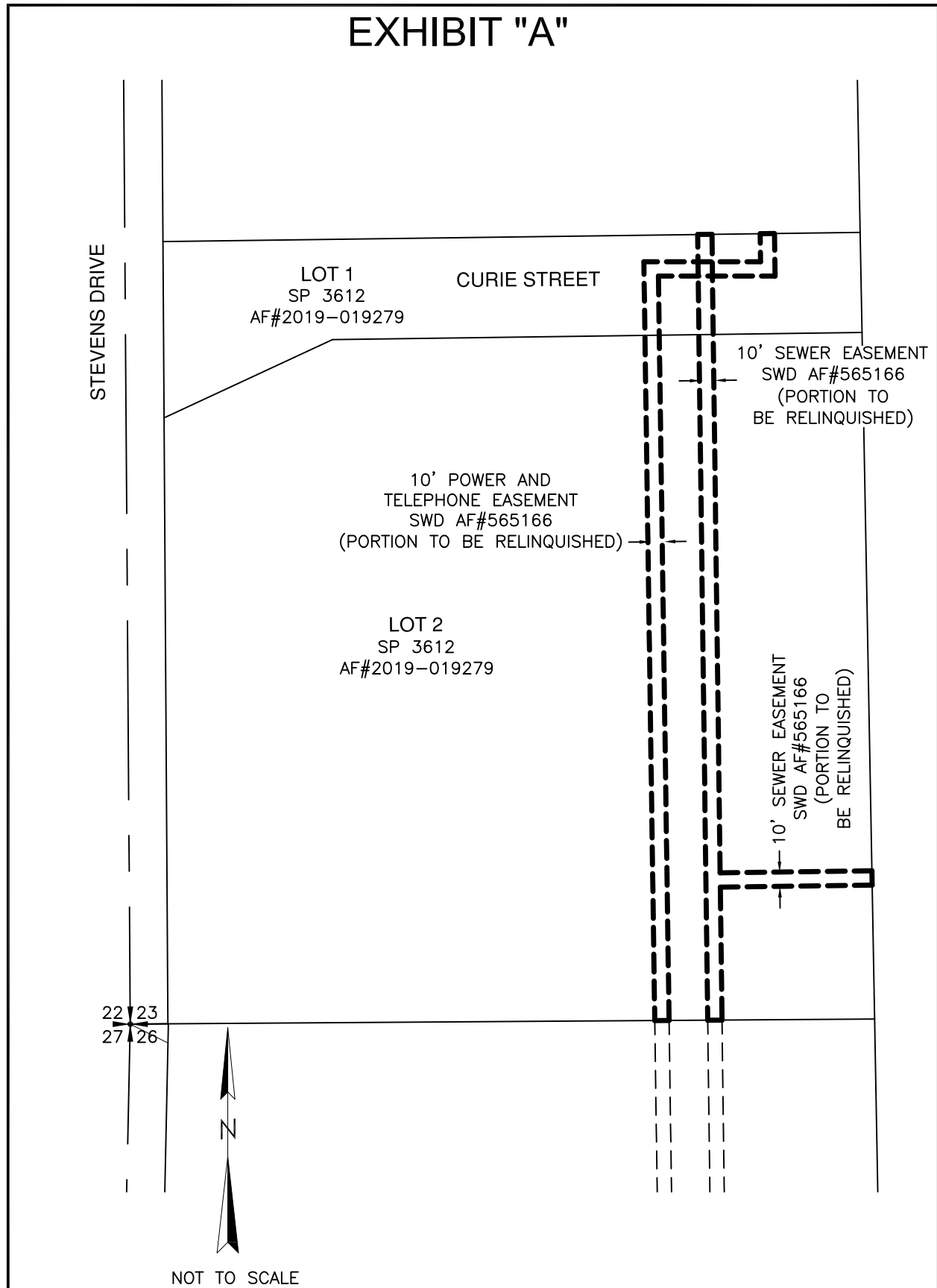
Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

EXHIBIT "A"





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Core Focus Area 3 - Increase Economic Vitality

Subject:

Resolution No. 141-20, Authorizing Utilization of Coronavirus Aid, Relief, and Economic Security (CARES) Act Funds to provide Utility Billing Relief

Department:

Administrative Services

Ordinance/Resolution Number:

141-20

Document Type:

Resolution

Recommended Motion:

Adopt Resolution No. 141-20, authorizing the utilization of CARES Act funds to provide utility billing relief to certain eligible residents of the City of Richland as provided therein.

Summary:

The COVID-19 pandemic has had significant, negative economic impacts on many of the residents and businesses in the City of Richland.

Due to job losses, business closures and a myriad of other restrictions imposed by the State, many residents and business owners are unable to meet their financial obligations, including payment of city utility bills.

On June 26, 2020, Richland City Council approved Resolution No. 87-20, authorizing an interagency agreement with the State of Washington Department of Commerce to grant Coronavirus Relief Funds (CRF) for local agencies.

City staff recommends that up to \$700,000 of CARES Act funds be made available to provide utility payment assistance to those residents and businesses most affected by the COVID-19 pandemic. Relevant and nondiscriminatory criteria will be developed to determine eligibility. The funding will be available until depleted or November 30, 2020, whichever occurs first.

Staff anticipates that all funds available will be utilized for utility billing relief; however, if any funds remain, they will be redirected to reimburse qualifying COVID-19 expenditures incurred by the City.

Staff recommends adoption of Resolution No. 141-20.

Fiscal Impact:

Funding to support this effort is made available by the State of Washington through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Attachments:

I. Resolution No. 141-20

RESOLUTION NO. 141-20

A RESOLUTION of the City of Richland authorizing utilization of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to provide utility billing relief to eligible Richland residents.

WHEREAS, the COVID-19 pandemic has significantly negatively impacted many of the residents and businesses in the City of Richland; and

WHEREAS, many residents and businesses have experienced economic challenges due to loss of employment, small business closures, and other state-imposed restrictions intended to slow the spread of COVID-19; and

WHEREAS, the City of Richland desires to provide utility billing relief to certain eligible residents and businesses through use of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding; and

WHEREAS, on June 16, 2020, Richland City Council adopted Resolution No. 87-20, authorizing an interagency agreement with the State of Washington Department of Commerce to grant Coronavirus Relief Funds (CRF) to local agencies; and

WHEREAS, up to \$700,000 is available for eligible residents facing suspension of service directly related to economic loss resulting from COVID-19; and

WHEREAS, relevant and non-discriminatory eligibility criteria will be developed to administer the relief authorized by this Resolution No. 141-20.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to utilize up to \$700,000 in CARES Act funding for utility billing relief for certain eligible residents of the City of Richland.

BE IT FURTHER RESOLVED that the utilization of said funds shall be in compliance with restrictions outlined in the *US Department of Treasury's CRF Guidance for State, Territorial, Local and Tribal Governments*, and as set forth in Section 601(d) of the Social Security Act as added by Section 5001 of the CARES Act.

BE IT FURTHER RESOLVED that said relief may be provided until the allocated funding is depleted or November 30, 2020, whichever occurs sooner.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

This space intentionally left blank.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Items - Approval

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Appointments to the Board of Adjustment: Brad Bricker and Michael Simpson

Department:
City Attorney

Ordinance/Resolution Number:

Document Type:
General Business Item

Recommended Motion:

Appoint Brad Bricker to Position No. 1 and Michael Simpson to Position No. 5 for the unexpired terms on the Board of Adjustment.

Summary:

The Board of Adjustment Position No. 1 has been vacated by Shari Richards. This seat has an unexpired term which ends on March 31, 2022.

Position No. 5 has been vacated by Marianne Boring. This seat has an unexpired term which ends on March 31, 2021.

The Board of Adjustment interview panel is recommending the appointments of Brad Bricker to Position No. 1 and Michael Simpson to Position No. 5.

Applications and resumes are on file in the City Clerk's Office.

Fiscal Impact:

None.

Attachments:

1. Recommendation for Position No. 1
2. Recommendation for Position No. 5



BOARD OF ADJUSTMENT

MEMORANDUM

TO: City Council

THROUGH: Jennifer Rogers, Richland City Clerk

FROM: Carl Van Hoff, Board of Adjustment

DATE: September 16, 2020

SUBJECT: Board of Adjustment Vacancy

On September 15, 2020 Board Member Boring, Planning Manager Stevens, myself considered 3 candidates for the Board of Adjustment position vacated by Shari Richards.

The candidate recommended to fill the vacancy is:

Position #1:

Vacated by:

Shari Richards

Selected Candidate:

Brad Bricker

If you have any questions, please feel free to contact me.

 9/16/2020

Carl Van Hoff
Board of Adjustment



BOARD OF ADJUSTMENT

MEMORANDUM

TO: City Council

THROUGH: Jennifer Rogers, Richland City Clerk

FROM: Carl Van Hoff, Board of Adjustment

DATE: September 30, 2020

SUBJECT: Board of Adjustment Vacancy

On September 15, 2020 Board Member Boring, Planning Manager Stevens and myself considered 3 candidates for the Board of Adjustment.

The candidate recommended to fill the vacancy created by Member Boring's appointment to the City Council is:

Position #5:

Vacated by:

Marianne Boring

Selected Candidate:

Michael Simpson

If you have any questions, please feel free to contact me.



Carl Van Hoff
Board of Adjustment



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Items of Business

Core Focus Area 3 - Increase Economic Vitality

Subject:

Ordinance No. 36-20, Amending Title 23 and the Official Zoning Map to Change Zoning on 7.4 Acres from Retail Business (C-2) to Limited Business (C-LB) (closed record)

Department:

Development Services

Ordinance/Resolution Number:

36-20

Document Type:

Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 36-20, amending Title 23 and the Official Zoning Map to change zoning on 7.4 acres from Retail Business (C-2) to Limited Business (C-LB).

Summary:

Tapeal Properties LLC filed an application to rezone two parcels totaling 7.4 acres from Retail Business (C-2) to Limited Business (C-LB). The property is located approximately 700 feet west of the SR-240/Steptoe Street roundabout.

The site was previously occupied by a residential mobile home park which has since been vacated. For the past ten years, the vacant site has become increasingly suitable habitat for feral animals and a regular target for illegal dumping. In an effort to facilitate site development, the owner is seeking to better align zoning regulations with favorable development types.

The Richland Hearing Examiner, after holding an open record public hearing, favorably recommends approval of the Tapeal Rezone application to reclassify the 7.4 acre site from C-2 (Retail Business) to C-LB (Limited Business), which is consistent with the City's Comprehensive Plan's Commercial land use designation assigned to the area.

RMC 19.20.010 and .030 provide that Council will hold a closed record decision hearing prior to rendering a decision on a site-specific rezone application. During a closed record review, no new evidence is allowed into the record, and only those who participated in the open record public hearing before the Hearing Examiner are allowed to testify to Council.

Staff recommends approval of Ordinance No. 36-20 for first reading, by title only.

Fiscal Impact:

None.

Attachments:

1. Ordinance No. 36-20
2. September 14, 2020 Hearing Examiner Recommendation - Z2020-103
3. Vicinity Map

WHEN RECORDED RETURN TO:

Richland City Clerk's Office
625 Swift Boulevard, MS-05
Richland, WA 99352

ORDINANCE NO. 36-20

AN ORDINANCE of the City of Richland amending Title 23: Zoning Regulations of the Richland Municipal Code and the Official Zoning Map of the City to change the zoning on 7.4 acres from Retail Business (C-2) to Limited Business (C-LB); said property being located approximately 700 feet west of the Steptoe Street/Highway SR-240 roundabout, and adopting the findings and conclusions of the Hearing Examiner as the findings and conclusions of the Richland City Council.

WHEREAS, on August 10, 2020 and on August 25, 2020, the Richland Hearing Examiner held a duly advertised public hearing to consider a petition from Young Asset Management, LLC (Nick Wright) acting on behalf of Tapteal Properties, LLC to change the zoning of the property hereafter described in Section 2 and located approximately 700 feet west of the Steptoe Street/Highway SR-240 roundabout; and

WHEREAS, on September 14, 2020, the Richland Hearing Examiner issued a written decision recommending approval of the requested rezone; and

WHEREAS, the Richland City Council has considered the record created during the August 10, 2020 and August 25, 2020 public hearings, and the written recommendation of the Richland Hearing Examiner.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. The findings and conclusions of the Richland Hearing Examiner as provided in the September 14, 2020 Recommendation are hereby adopted as the findings and conclusions of the Richland City Council.

Section 2. It is hereby found, as an exercise of the City's police power, that the best land use classification for the land described below is Limited Business (C-LB) when consideration is given to the interest of the general public.

Section 3. Said property, depicted in **Exhibit A**, attached hereto and incorporated by this reference, is more particularly described as follows:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 25,
TOWNSHIP 9 NORTH, RANGE 28 EAST, WILLAMETTE MERIDIAN,
BENTON COUNTY, WASHINGTON, LYING NORTH OF THE COLUMBIA
IRRIGATION DISTRICT CANAL, WEST OF THE PORT OF BENTON
RAILROAD RIGHT-OF-WAY, SOUTH OF THE COLUMBIA PARK TRAIL
RIGHT-OF-WAY AND EAST OF A PARCEL IDENTIFIED BY BENTON
COUNTY PARCEL IDENTIFICATION NUMBER 1-25981000012000.

Section 4. Such property is rezoned from Retail Business (C-2) to Limited Business (C-LB).

Section 5. Richland Municipal Code Title 23 and the Official Zoning Map of the City, as adopted by Section 23.08.040 of said Title, are hereby amended by amending Sectional Map Number 14, which is one of a series of maps constituting said Official Zoning Map, as shown on the attached **Exhibit B**, and bearing the number and date of passage of this Ordinance, and by this reference made a part of this Ordinance and of the Official Zoning Map of the City.

Section 6. The City Clerk is directed to file with the Auditor of Benton County, Washington, a copy of this Ordinance and the attached amended Sectional Map Number 14, duly certified by the City Clerk as a true copy.

Section 7. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

This space intentionally left blank.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the ____ day of October, 2020.

Ryan Lukson, Mayor

Attest:

Approved as to form:

Jennifer Rogers, City Clerk

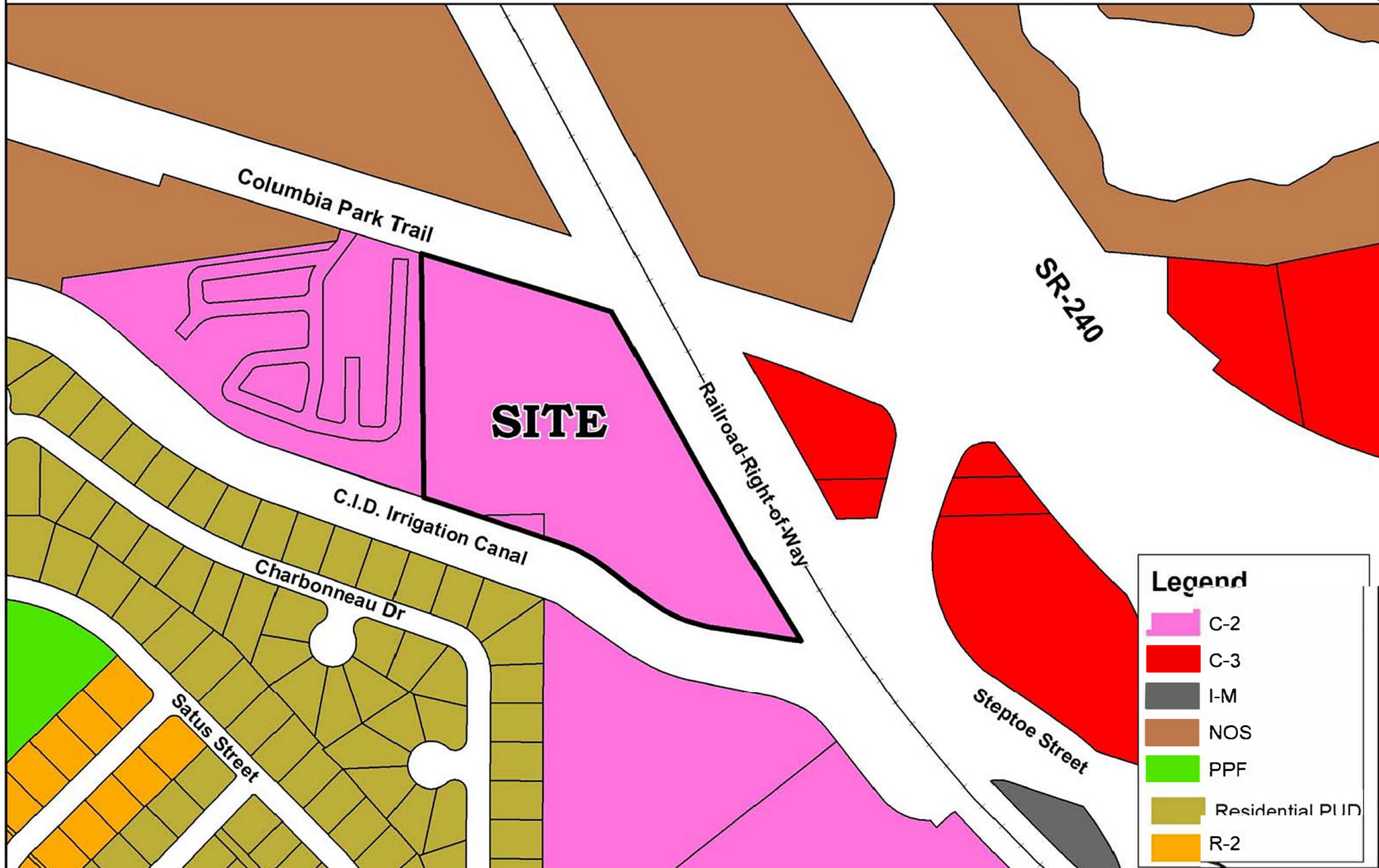
Heather Kintzley, City Attorney

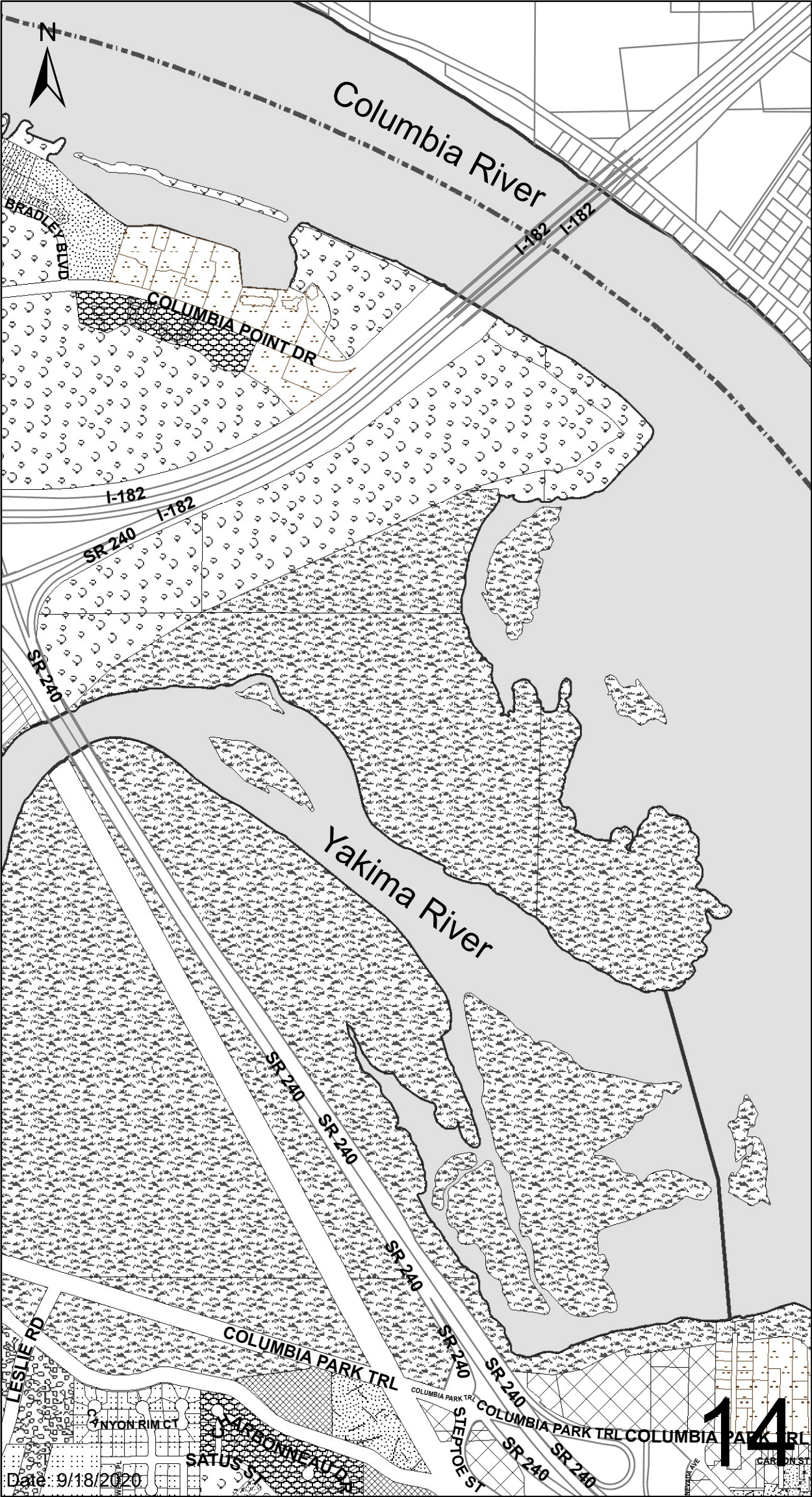
Date Published: _____

Zoning Map

Item: Rezone C-2 to C-LB
Applicant: Tapteal Properties LLC
File #: Z2020-103

Exhibit A to Ordinance No. 36-20





**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding the Application to *Rezone* a 7.4)
acre site from one Commercial land use)
designation, C-2 (Retail Business), to)
another Commercial land use designation,)
the C-LB (Limited Business) zoning district,)
which is consistent with Comprehensive)
Plan land use designations assigned to the)
area, submitted on behalf of the property)
owner,)

File No. Z2020-103

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

TAPTEAL PROPERTIES, LLC,

APPLICANT/AGENT: YOUNG ASSET MANAGEMENT, LLC)
(NICK WRIGHT),)

Applicant)

I. SUMMARY OF RECOMMENDATION.

The applicant, Young Asset Management, LLC (Nick Wright), acting on behalf of the property owner, Tapteal Properties, LLC, can meet its burden of proof to demonstrate that its requested rezone merits approval. The site is now designated as suitable for Commercial land uses under the City's Comprehensive Plan, and the request is to rezone the property from one Commercial zone, C-2 (Retail Business), to another Commercial land use designation, the C-LB (Limited Business) zoning district.

This requested rezone does not approve any development activity on the site. As with all development proposals, City Development Regulations will apply to any specific projects that may eventually be proposed on the site. Limited written comments with general requests for project mitigation and the like are more appropriately directed at future project-specific development proposals that may come forward, and do not provide a basis in fact or law to deny the pending rezone request.

**FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION RE: TAPTEAL REZONE
APPLICATION TO CHANGE A 7.4-ACRE SITE
FROM THE C-2 (RETAIL BUSINESS) TO C-LB
(LIMITED BUSINESS) ZONING DISTRICT
– FILE NO. Z2020-103**

GARY N. MCLEAN
HEARING EXAMINER FOR THE CITY OF RICHLAND
CITY HALL – 625 SWIFT BOULEVARD
RICHLAND, WASHINGTON 99352

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II. BACKGROUND and APPLICABLE LAW.

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing on the site-specific rezone application at issue and is directed to issue a written recommendation for consideration and final action by the Richland City Council. *See* Richland Municipal Code (RMC) 19.20.010(D)(identifies “site-specific rezones” as Type IIIA permit applications); RMC 23.70.210(A)(“The hearing examiner shall conduct an open record public hearing as required by RMC Title 19 for a Type IIIA permit application.”); and RMC 19.20.030(granting jurisdiction to Hearing Examiner to conduct public hearing and issue recommendation to City Council); RMC 19.25.110(authority for Examiner actions, including conditions of approval on applications or appeals); and RCW 35A.63.170(state statute regarding hearing examiner system).

The applicant bears the burden of proof to show that its application conforms to the relevant elements of the city’s development regulations and comprehensive plan, and that any significant adverse environmental impacts have been adequately addressed. RMC 19.60.060.

Finally, Washington Courts apply three basic rules when reviewing appeals of rezone applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a rezone must demonstrate that there has been a change of circumstances since the original zoning, PROVIDED if a proposed rezone implements the policies of a comprehensive plan, a showing of changed circumstances is usually not required¹; and (3) the rezone must have a substantial relationship to the public health, safety, morals, or general welfare. *Woods v. Kittitas County*, 162 Wn.2d 597 (2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861, at 875 (1997); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462 (1978).

III. QUESTIONS PRESENTED.

For purposes of the pending rezone application, the central questions presented are:

A. Whether the requested rezone implements policies of the City’s Comprehensive Plan, and/or whether there has been a change of circumstances since the original C-2 (Retail Business) zoning was adopted for the site?

Short Answer: Yes to both. The site is already designated for Commercial uses in the City’s Comprehensive Plan, and the rezone request would only change the zoning from one Commercial zoning district (C-2) to another (C-LB). And, the property has not found a buyer interested in redeveloping the site under current C-2 zoning, leaving it in a distressed condition that is not in the public interest. The requested rezone is meant to facilitate the applicant’s plans to redevelop the site

¹ *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71 (1983); *Henderson v. Kittitas County*, 124 Wn. App. 747, 754 (Div. III, 2004); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. III, 1995).

1 in a manner fully authorized under the C-LB zone.

2 B. Whether the rezone bears a substantial relationship to the public health, safety, morals, or
3 general welfare?

4 *Short Answer:* Yes, because the rezone is fully consistent with the City's Comprehensive
5 Plan, and any future, project-specific proposal will have to meet city development regulations,
6 including SEPA, possible subdivision codes, traffic impact reviews, public infrastructure concurrency
7 reviews, and payment of any impact fees in effect at the time of an application.

8 IV. RECORD.

9 Exhibits entered into evidence as part of the record, and an audio recording of the public
10 hearing, are maintained by the City of Richland, and may be examined or reviewed by contacting the
11 City Clerk's Office.

12 Public notices regarding the application and public hearing were mailed and posted as
13 required by city codes prior to the public hearing, which occurred on August 10, 2020. As explained
14 in the Staff Report, a notice was not published in the City's local newspaper due to a clerical error.
15 Accordingly, the Examiner held the record open and continued the public hearing to August 25, 2020,
16 before which time notice was published in the local newspaper. (*See Revised Staff Report for Aug.
25th hearing, on page 5; Ex. 2, notice materials mailed and posted on July 9th and 7th respectively;
Ex. 3, notice published on Aug. 14th for continued hearing on Aug 25th*). To avoid any challenges that
could arise based on insufficient notice by publication (i.e. 15 days prior to an open record hearing,
see RMC 19.30.040(C)(2)), the Examiner confirmed with Staff that – other than supportive comments
from Mike and Ann O'Neill (no relation to Senior Planner, Shane O'Neill) who live south of the site
across the CID irrigation canal on Charbonneau Drive (included in the record as part of *Exhibit 3*) –
no one submitted any written comments regarding this application since a formal notice was published
in the local paper on August 14, 2020, up to and including the date of this Recommendation.

17 In sum, after a long public notice period and an extended window allowing for receipt of
18 written comments, and two days on which the public hearing provided members of the general public
19 with an opportunity to offer comments via sworn testimony, no one offered any opposition comments,
evidence, or legal authority that would serve as a basis to deny this application.

20 **Hearing Testimony:** Only city staff (Senior Planner, Shane O'Neill and Planning Manager,
21 Mike Stevens) and the applicant's designated representative, Nick Wright, asked to present testimony
22 under oath during either day of the public hearing, which opened on August 10, 2020, and concluded
23 on August 25, 2020. Given the ongoing limits placed on public gatherings due to the Covid-19 health
emergency, the Examiner conducted the public hearing via online communication means, coordinated
by city staff, which included video images of participants and several exhibits. Staff confirmed that
no one else was online or phoned in to participate each day of the hearing.

24 FINDINGS OF FACT, CONCLUSIONS AND
25 RECOMMENDATION RE: TAPTEAL REZONE
26 APPLICATION TO CHANGE A 7.4-ACRE SITE
FROM THE C-2 (RETAIL BUSINESS) TO C-LB
(LIMITED BUSINESS) ZONING DISTRICT
– FILE NO. Z2020-103

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HEARING EXAMINER FOR THE CITY OF RICHLAND
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Exhibits: The Development Services Division Staff Report for the requested Rezone, including a recommendation of approval, was provided to the Examiner before the hearing on August 10th, with a Revised Staff Report issued by Staff and received by the Examiner before the continued hearing date on August 25th. The Staff Report, as revised for the Aug. 25th hearing date, and the following Exhibits, were all accepted into the Record in their entirety without modification:

1. Application materials for Rezone;
2. Public notice materials, confirming mailing and posting;
- 2A. Public notice materials, confirming publication of notice;
3. Written comments received; and
4. Site photos.

The Examiner has visited the road network and vicinity of the proposed rezone on multiple occasions over the past few years in connection with other applications, and is fully advised on matters at issue herein, including without limitation adjacent developments and land uses, applicable law, application materials, and relevant comprehensive plan provisions.

V. FINDINGS OF FACT.

Based upon the record, the undersigned Examiner issues the following Findings of Fact.

Application, Site Location and Conditions

1. On June 17, 2020, Young Asset Management, LLC filed an application (*Exhibit 1*) on behalf of the property owner, Tapteal Properties, LLC, asking to rezone a 7.4-acre site from Retail Business (C-2) to Limited Business (C-LB).

2. The project site is located about 700 feet west of the Steptoe Street/Hwy SR-240 round-about, on two tax parcels, numbered 1-25981000011001 and 1-25981000015000, with Columbia Park Trail to the north, railroad right-of-way on the east, a C.I.D. irrigation canal on the south, and an RV campground to the west. (*Staff Report, page 2, Figure 1, vicinity map*).

3. The site once housed a mobile home park, which has long since been abandoned, leaving remnants of pavement, irregular landscaping, and other materials. The property is currently in a distressed condition and a regular site of illegal dumping, creating an ongoing maintenance problem for the property owner. (*Testimony of Mr. Wright; Staff Report, pages 3 and 9; Ex. 4, site photos; Site visits*). The Staff Report describes current site conditions that serve as an attractive habitat for skunks and rodents. Given such conditions, Staff deemed this application to be in the public's interest, as a means to facilitate redevelopment of the site. (*Staff Report, page 9*).

4. The purpose of this request is to zone the site in a manner consistent with the city's Comprehensive Plan while allowing for multi-family development without the requirement of first floor commercial space. (*Ex. 1, application, on page 2; Staff Report, page 4*).

**FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION RE: TAPTEAL REZONE
APPLICATION TO CHANGE A 7.4-ACRE SITE
FROM THE C-2 (RETAIL BUSINESS) TO C-LB
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1 5. The application notes that the current property owner has not been able to sell the land for
2 about 20 years under current C-2 zoning, so they have decided to develop the site themselves,
3 presumably after obtaining this requested rezone to C-LB, which would retain the current Commercial
4 land use designation, but assign a different commercial zone that does not mandate ground floor
commercial space beneath multi-family housing, which the applicant finds to be atypical in the Tri-
City area. (*Ex. 1, application responses on pages 1 and 2*).

5 6. Based on the applicant's unchallenged representations that the property has not been
6 attractive for redevelopment for many years under current zoning, the Examiner finds that
7 circumstances have changed since the original C-2 zone was assigned to the property, as no one has
8 stepped forward to pursue development options available under C-2 zoning. The site is generously
9 described as a visual blight and source of rodents, pests, and feral animals, all of which are
10 incompatible with residences on adjacent properties and pose public health concerns. (*Staff Report,*
page 10; Testimony of Mr. O'Neill; Prior site visits to the area). These changed circumstances – and
current site conditions under existing C-2 zoning – support the requested rezone to C-LB that will
hopefully provide the applicant or some other party with economically viable and realistic options for
redeveloping the property, which would clearly be in the public's interest.

11 7. As described above, this application was reviewed and subject to an extended public notice
12 and hearing process. No one submitted any comments, evidence, or legal authority that would serve
13 as a basis to deny this requested rezone. (*See summary of Record, in Sec. IV above*). Comments were
generally focused on conditions and considerations that could be relevant in future development
application processes, but not this rezone application.

14 8. Because staff deemed the application to be consistent with the City's Comprehensive Plan,
15 which already designates the rezone site as suitable for Commercial land uses, and the City's plan
16 was analyzed in an environmental impact statement at the time of its adoption, the pending application
is categorically exempt from SEPA review as provided in WAC 197-11-800(6)(c). (*Staff Report,*
page 7; Official notice from record of previous rezone matters re: City SEPA process(es) undertaken
when Comprehensive Plan was adopted and amended).

17 9. The rezone is not likely to have any material impact on capacity for the existing local street
18 system serving the property. The City's transportation engineer confirms that the access road that is
19 and will be used for the property, Columbia Park Trail, has sufficient capacity to serve the site if it is
20 rezoned and developed with even the highest traffic generating uses allowed in the C-LB zone. (*Staff*
Report, page 7). The record does not include any evidence that the C-LB zone could allow for any
uses that would be incompatible with surrounding uses.

21 ***Summary of Public Hearing.***

22 10. As explained above, the public hearing for this matter spanned two publicly noticed times on
23 two days in the month of August. When the hearing opened, Mr. O'Neill made a brief presentation
24 regarding the application, current site conditions and general nuisances posed to adjacent properties,

25 **FINDINGS OF FACT, CONCLUSIONS AND**
RECOMMENDATION RE: TAPTEAL REZONE
APPLICATION TO CHANGE A 7.4-ACRE SITE
FROM THE C-2 (RETAIL BUSINESS) TO C-LB
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26 **– FILE NO. Z2020-103**

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and his recommendation of approval, as explained in the Staff Report. The applicant's designated representative, Nick Wright, appeared for both days of the hearing and confirmed that he accepted the analysis and recommendation included in the Staff Report without objection or changes. No members of the general public appeared during the online hearing, by phone or computer, and Staff confirmed that no one reached out to say that they planned to participate in the hearing, other than people who were online for each day of the hearing.

11. As explained in the Staff Report, the application materials, and the hearing testimony provided by Mr. O'Neill and Mr. Wright, the requested rezone would allow for development of multi-family housing on the site without a requirement for ground-floor commercial space, as required under the current C-2 zone. Both the existing C-2 zone and the future C-LB zone expressly permit multi-family housing. In this matter, the applicant prefers the C-LB zone because it does not mandate commercial space on the ground floor, something it views as not typical for projects built in the Tri-Cities.

12. As with all rezone applications, future plans are not binding on an applicant, and do not serve as a basis to deny the requested rezone.

13. The requested rezone is fully consistent with land use policy goals in the City's Comprehensive Plan. (*Staff Report, pages 7-9*). No one testified to express concerns with or opposition to this rezone application.

Public services and utilities are adequate and readily available to serve the site.

14. As part of the review process, City staff confirmed that adequate utilities, including without limitation water, power, and sewer, are in place and/or readily available to serve the parcel that is at issue in this matter. (*Staff Report, pages 5, 6*).

Consistency with City Codes and Comprehensive Plan.

15. As explained elsewhere in this Recommendation, the rezone site is already designated as "Commercial" in the City's Comprehensive Plan, and the request is to modify the classification from one Commercial classification to another, in this case from C-2 to C-LB.

16. Based on the record, the Examiner finds and concludes that the requested rezone from one Commercial classification to another in an area where a mix of similar uses can be found in the vicinity is appropriate. The requested C-LB zone is not inconsistent with existing land uses located on or zoning designations assigned to surrounding properties in the area. (*See Zoning Map provided on page 3 of Staff Report, Figure 2*).

17. Standing alone, the requested rezone conforms to the Comprehensive Plan, because the plan already identifies the property as suitable for Commercial uses.

General findings.

FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION RE: TAPTEAL REZONE
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1 18. The requested rezone bears a substantial relationship to the public health, safety, and general
2 welfare. The requested rezone is appropriate in the context of adjacent properties.

3 19. The Development Services Division Staff Report, prepared by Mr. O'Neill, includes a
4 number of specific findings and explanations that establish how the underlying application satisfies
5 provisions of applicable law and is consistent with the city's Comprehensive Plan and zoning
6 regulations. Except as modified in this Recommendation, all Findings contained in the Staff Report
7 are incorporated herein by reference as Findings of the undersigned-hearing examiner.

8 20. Any factual matters set forth in the foregoing or following sections of this Recommendation
9 are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this section as
10 such.

11 VI. CONCLUSIONS.

12 Based upon the record, and the Findings set forth above, the Examiner issues the following
13 Conclusions:

14 1. The applicant met its burden to demonstrate that the requested rezone conforms to, and in
15 fact implements objectives of, the City's Comprehensive Plan. *Findings; Staff Report.*

16 2. The applicant met its burden to demonstrate that the requested rezone bears a substantial
17 relationship to the public health, safety, or welfare.

18 3. The Staff Report and testimony in the record demonstrate that the proposed rezone will not
19 require new public facilities and that there is capacity within the transportation network, the utility
20 system, and other public services, to accommodate all uses permitted in the new C-LB zone requested
21 herein. The rezone from one Commercial zoning classification to another, C-2 to C-LB, will keep
22 the property compatible with the character of the existing uses and zoning districts surrounding the
23 site. While not a criteria for approval of any rezone, the applicant's stated plans for the property –
24 multi family housing – is already permitted under the C-2 zone, and will be in the requested C-LB
25 zone. In this matter, the property owner/applicant prefers the C-LB zone for the site, because it does
26 not mandate ground floor commercial space under residential units above, as required in the existing
C-2 zone.

4. The rezoned site will not be materially detrimental to uses or property in the immediate vicinity
of the subject property. In fact, the rezone may serve as a boost for redevelopment plans on the
property, which should eliminate blight conditions and nuisances presented by current conditions.

5. While the pending rezone application is categorically exempt from formal SEPA review, the
record demonstrates that the potential for adverse impacts is very unlikely. And, despite the ample

FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION RE: TAPTEAL REZONE
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1 public notices issued for the application, no one spoke or submitted any written comments opposing
2 the pending rezone request.

3 6. As required by RMC 19.50.010(C), the transportation system is sufficient to accommodate
4 the type of development envisioned with the proposed rezone. The surrounding road network is fully
5 functional, and no transportation concurrency problems are likely to arise as a result of the rezone for
6 the site. Development regulations, including without limitation those detailing frontage
7 improvements, impact fees, setbacks, and the like, will apply to any future project built on the site.

8 7. Based on the record, the applicant demonstrated its rezone application merits approval,
9 meeting its burden of proof imposed by RMC 19.60.060.

10 8. Approval of this rezone will not and does not constitute, nor does it imply any expectation of,
11 approval of any permit or subsequent reviews that may be required for development or other regulated
12 activities on the site of the subject rezone.

13 9. Any finding or other statement contained in this Recommendation that is deemed to be a
14 Conclusion is hereby adopted as such and incorporated by reference.

15 VII. RECOMMENDATION.

16 Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that
17 the Tapteal Rezone application (File No. Z2020-103) to reclassify a 7.4 acre site from one
18 Commercial land use designation, C-2 (Retail Business), to another Commercial land use designation,
19 the C-LB (Limited Business) zoning district, which is consistent with the Comprehensive Plan's
20 Commercial land use designation assigned to the area, should be **APPROVED**.

21 ISSUED this 14th Day of September, 2020



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Gary N. McLean
Hearing Examiner

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FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION RE: TAPTEAL REZONE
APPLICATION TO CHANGE A 7.4-ACRE SITE
FROM THE C-2 (RETAIL BUSINESS) TO C-LB
(LIMITED BUSINESS) ZONING DISTRICT
– FILE NO. Z2020-103

Community
Map

Item: Rezone C-2 to C-LB
Applicant: Tapteal Properties LLC
File #: Z2020-103





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 10/6/2020

Agenda Category: Items of Business

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Consulting Services for City Manager Annual Evaluation Process

Department:

City Council

Ordinance/Resolution Number:

Document Type:

General Business Item

Recommended Motion:

Summary:

A Council subcommittee made up of Mayor Lukson, Mayor Pro Tem Kent and Councilmember Alvarez met with Julia Novak of The Novak Consulting Group to discuss a scope of work for services related to the City Manager annual evaluation process. As a result of the meeting, the subcommittee would like to engage in further discussion regarding consulting services for this process.

Fiscal Impact:

Attachments: