

COUNCIL MEETING MINUTES

AUGUST 10, 2020

DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, AUGUST 10, 2020

CONVENED The meeting convened at 7:00 p.m. with Mayor Swenson presiding.

ROLL CALL

Mayor Swenson	Present
Councilor Carney	Present -via video conferencing
Councilor Cornwell	Present -via video conferencing
Councilor Schaub	Present -via video conferencing
Councilor Morris	Present -via video conferencing
Councilor Ellsworth	Present -via video conferencing
Councilor Cabrales	Present -via video conferencing

Staff Present (via video conferencing): City Administrator Derickson, Assistant City Administrator Row, Economic Development Director Johnk, Community Development Director Kerr, Police Chief Ferraris, Operations Director Stultz, Finance Director Turley, Assistant City Attorney Granum, Human Resources Director Gregg, Engineering Director Liljequist, Parks and Recreation Manager Cuomo, City Recorder Pierson

PRESENTATIONS

Presentation on the Woodburn Mortgage Assistance Program by DevNW- Economic Development Director Johnk and Amy Hamilton with DevNW provided information on the how DevNW will assist with the City's mortgage assistance program.

CONSENT AGENDA

- A. Woodburn City Council minutes of July 13, 2020,
- B. Woodburn City Council Executive Session minutes of July 13, 2020,
- C. Woodburn City Council Work Session minutes of July 27, 2020,
- D. Woodburn City Council Executive Session minutes of July 27, 2020,
- E. Acceptance of a Public Utility Easement at 619 Harrison Street, Woodburn, OR 97071 (Tax Lot 051W07CD01501),
- F. Acceptance of a Public Right-of-Way Dedication at 619 Harrison Street, Woodburn, OR 97071 (Tax Lot 051W07CD01501),
- G. IGA with Marion County for "eProsecutor" Access,
- H. Building Activity for July 2020,
- I. Reaffirmation of City Excessive Force Policy Declaration,
- J. Liquor License Application for Woodburn-Denn LLC.,
- K. Liquor License Application for OGA Golf Course Inc.,
- L. Liquor License Application for Fusion 99 Inc.,
- M. Liquor License Application for Mango's Bar LLC.,
- N. Liquor License Application for B&E 4 LLC.,
- O. Crime Statistics through June 2020.

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Councilor Carney asked what the reaffirmation of City Excessive Force Policy Declaration is and City Administrator Derickson stated that it is a requirement of the CDBG Block Grant and this updates the City's HUD Policy stating that the City won't use force against nonviolent protestors. Councilor Carney asked who in the City decides what violence is and Police Chief Ferraris stated that it would be him. Councilor Ellsworth asked what part two of the declaration meant and Police Chief Ferraris stated that if there is a nonviolent demonstration and an entrance or exit is being blocked laws will be enforced to prohibit that blockage. **Carney/Morris...** adopt the Consent Agenda. The motion passed unanimously.

COUNCIL BILL NO. 3135 - A RESOLUTION ADDRESSING FAIR HOUSING ASSISTANCE IN THE CITY OF WOODBURN, AS REQUIRED BY THE OREGON COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AND REPEALING AND REPLACING RESOLUTION NO. 1346

Carney introduced Council Bill No. 3135. City Recorder Pierson read the bill by title only since there were no objections from the Council. City Administrator Derickson provided a staff report. On roll call vote for final passage, the bill passed unanimously. Mayor Swenson declared Council Bill No. 3135 duly passed.

COUNCIL BILL NO. 3136 - A RESOLUTION ADOPTING THE "MAYOR'S PLEDGE" RELATED TO USE OF FORCE AND AUTHORIZING THE MAYOR TO SIGN THE MAYOR'S PLEDGE ON-LINE

Carney introduced Council Bill No. 3136. City Recorder Pierson read the bill by title only since there were no objections from the Council. City Administrator Derickson provided a staff report. Councilor Carney stated that he supports the objectives that are outlined on the website but does not wish to be associated with the website in any way because of the content of the website. Councilor Morris stated that he supports it and the City should be leading the way in these kinds of things. Councilor Ellsworth stated that she supports the tenants of the document. Councilor Cabrales stated that she supports the Mayor signing this document. On roll call vote for final passage, the bill passed with Councilor Carney voting no. Mayor Swenson declared Council Bill No. 3136 duly passed.

SALE OF PROPERTY LOCATED AT 11842 NE CHATEAU DR.

Carney/Cornwell... Authorize the City Administrator to enter into a purchase and sale agreement and transfer title of City owned property located at 11842 Chateau Dr. NE, Woodburn, OR 97071 to Rubin Ramirez Guzman and Luz M. Ramirez-Tarin by means of a Statutory Warranty Deed. The motion passed unanimously.

PLANNING COMMISSION OR ADMINISTRATIVE LAND USE ACTIONS

Call-Up Briefing: Planning Division Staff Approval of a Preliminary Partition of Parcel 1, Partition Plat 2019-063 (Phase 1B of Smith Creek)

The Council declined to call this item up.

CITY ADMINISTRATOR'S REPORT

COUNCIL MEETING MINUTES

AUGUST 10, 2020

The City Administrator reported the following:

- Work on the Covid situation continues. Hopes that everyone has had a chance to review the Covid Updates that he has been sending out.
- A financial plan on how to best utilize the \$738,000 in CARES Act funds will be coming to the next Council meeting.
- Making progress on the FHDC Block Grant, and there may be more items coming back in September.
- The purchase of the Family Resource building is in the works and hoping that Love INC. will be in there by the end of the year.
- Will be in town this Friday but largely unavailable.

MAYOR AND COUNCIL REPORTS

Councilor Morris thanked everyone for the debate tonight in regards to the Mayor's pledge and appreciates the discussion on that. Stated that he had someone who asked where to get a Covid test and that he is surprised there are people who are still not hearing about where to get the tests.

Councilor Ellsworth stated that she misses having Fiesta this year and will also miss the LOC conference.

Councilor Cornwell stated that she has had people ask her to find out if the fertilizer plant is safe. City Administrator Derickson stated that they will look into this between now and the September meeting and report back.

Mayor Swenson stated that he has been on the last two League of Oregon Cities calls and that they are working on making sure that the federal money that was given to the states to distribute to the cities is all distributed to cities. He attended a Census meeting as well as a meeting with the County and the People of Color Alliance. Attended a County meeting discussing going back to school and the Covid facility here in Woodburn. Attended the Mayor's conference where there were presentations on broadband connectivity, and leadership. A work session is scheduled for August 31 with possible topics being broadband connectivity, a community center update, a report from Marion County Health, a budget update, or a Mid valley recovery team presentation.

City Administrator Derickson stated that from a staff prospective a community center update would be beneficial.

ADJOURNMENT

Morris/Carney... meeting be adjourned. The motion passed unanimously.

The meeting adjourned at 8:28 p.m.

APPROVED _____

ERIC SWENSON, MAYOR

COUNCIL MEETING MINUTES
AUGUST 10, 2020

ATTEST _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

DRAFT

COUNCIL WORK SESSION MEETING MINUTES AUGUST 31, 2020

DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, AUGUST 31, 2020

CONVENED The work session convened at 7:00 p.m. with Mayor Swenson presiding.

COUNCIL PRESENT

Mayor Swenson	Present
Councilor Carney	Present -via video conferencing
Councilor Cornwell	Present -via video conferencing
Councilor Schaub	Present -via video conferencing
Councilor Morris	Present -via video conferencing
Councilor Ellsworth	Present -via video conferencing
Councilor Cabrales	Present -via video conferencing

Staff Present: City Administrator Derickson, City Attorney Shields, Assistant City Attorney Granum, Assistant City Administrator Row, Police Chief Ferraris, Deputy Police Chief Pilcher, , City Recorder Pierson

Councilor Schaub stated that she would like to make a motion. **Schaub/Morris...** that the Woodburn City Council conduct a vote via no confidence for Mayor Eric Swenson.

Councilor Schaub explained that the vote of no confidence is based on the actions of the Mayor and would like members of the Council to discuss this and make a vote.

Councilor Morris provided a presentation on the items for the Council to consider in regards to Mayor Swenson and the no confidence vote. Those items included his discussions with Marion County in regards to the pandemic, the BLM protest, the Father's Day Parade and a walk through of some real estate property.

Mayor Swenson stated that he appreciates the chance to talk about these things and provided explanations to the situations that Councilor Morris brought up.

Councilor Carney asked questions of the Mayor in regards to Marion County's Covid facility and inquired as to why he wasn't keeping the Council informed on what was happening.

Councilor Schaub stated that she was appalled that he even suggested the Super 8 considering where it is located in Woodburn.

Councilor Cornwell stated that she has concerns about the Mayor denying that he had anything to do with the facility coming to Woodburn and wishes that the Mayor would have been more honest with what had happened.

Councilor Ellsworth stated that she understands that mistakes can be made but her main concern is what the motivation behind all of this was and whether the Mayor was naïve or if there were nefarious intentions.

Councilor Cabrales stated that she understands what everyone is saying and believes that this was a mistake and to try and think about the great things the Mayor has done.

City Attorney Shields stated that he did not know that the Mayor had spoken with the owner of the Super 8 until he read about it in Marion County's response.

City Administrative Derickson stated that he did not know the County was looking in Woodburn until June 16 when the County called him.

Councilor Morris stated that his biggest concern is what is going to come next that we don't know anything about.

Mayor Swenson stated that he understands the feelings around this and the connections being made and that there was some naiveté on his part.

The Mayor called for a roll call vote on the motion. On roll call vote the motion passed 5-1 with Councilor Cabrales voting no.

The work session items that were scheduled to take place at this meeting were postponed to a later date.

ADJOURNMENT

Morris/Ellsworth... meeting be adjourned. The motion passed unanimously. The meeting adjourned at 8:36 p.m.

APPROVED _____
ERIC SWENSON, MAYOR

ATTEST _____
Heather Pierson, Recorder
City of Woodburn, Oregon

CITY OF WOODBURN

Economic and Development Services Department

MEMORANDUM

270 Montgomery Street

Woodburn, Oregon 97071

(503) 982-5246

Date: September 1, 2020

To: Chris Kerr, Community Development Director

From: Ted Cuno, Building Division 

Subject: Building Activity for August 2020

	2018		2019		2020	
	No.	Dollar Amount	No.	Dollar Amount	No.	Dollar Amount
Single-Family Residential	12	\$2,877,988	1	\$241,108	7	\$1,449,434
Multi-Family Residential	0	\$0	0	\$0	0	\$0
Assisted Living Facilities	0	\$0	0	\$0	0	\$0
Residential Adds & Alts	3	\$34,215	3	\$32,527	6	\$173,430
Industrial	0	\$0	0	\$0	0	\$0
Commercial	9	\$976,260	10	\$162,097	5	\$637,165
Signs and Fences	0	\$0	0	\$0	0	\$0
Manufactured Homes	0	\$0	0	\$0	0	\$0
TOTALS	24	\$3,888,463	14	\$435,732	18	\$2,260,029
Fiscal Year to Date (July 1 – June 30)		\$21,935,797		\$2,587,641		\$6,044,206



Permits Issued

WOODBURN BUILDING DEPARTMENT
270 Montgomery Street
Woodburn, OR 97071
503-982-5246
FAX: 503-980-2496

www.ci.woodburn.or.us

8/1/2020 through 8/31/2020

Includes all valuations

building.dept@ci.woodburn.or.us

Record Types Selected: -All-

Commercial Alarm or Suppression Systems

971-20-000156-FIRE	Issued: 8/20/20	Fees: \$1,080.30	Valuation: \$28,558.00
Address: 1800 W HAYES ST, WOODBURN, OR 97071	Parcel: 052W12DD06300		
Owner: WOODBURN SCHOOL DISTRICT 103			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Addition		
Work Description: Addition to an existing fire alarm system in renovated areas of the Nellie Muir Elementary School, and installation of a new addressable class B fire alarm system with voice evacuation in new construction areas of the Nellie Muir Elementary School.			
971-20-000328-FIRE	Issued: 8/13/20	Fees: \$2,909.34	Valuation: \$130,000.00
Address: 2215 PROGRESS WAY, WOODBURN, OR 97071	Parcel: 051W08B 01500		
Owner: IVANOV INVESTMENT GROUP LLC			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: New		
Work Description: New Fire Sprinkler System			
971-20-000330-FIRE	Issued: 8/31/20	Fees: \$1,556.37	Valuation: \$98,775.00
Address: 1041 N BOONES FERRY RD, WOODBURN, OR 97071	Parcel:		
Owner:			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Addition		
Work Description: NEW FIRE SPRINKLER SYSTEM TO NEW ADDITION.			
971-20-000336-FIRE	Issued: 8/11/20	Fees: \$1,770.87	Valuation: \$59,000.00
Address: 440 PARR RD NE, WOODBURN, OR 97071	Parcel: 052W13 00500		
Owner: WOODBURN SCHOOL DIST #103			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Addition		
Work Description: Low voltage cabling & equipment for new fire alarm initiating and voice-evac notification in annex building.			

Permits Issued:

Commercial Alarm or Suppression Systems

971-20-000344-FIRE		Issued: 8/21/20	Fees: \$1,787.49	Valuation: \$60,000.00
Address: 2775 N FRONT ST, WOODBURN, OR 97071				
Owner: CIRRUS NORTHWEST LLC				
Licensed Prof:				
Category of Construction: Industrial		Type of Work: Addition		
Work Description: Modify fire sprinkler system and extend into new warehouse addition. Install new wet pipe riser, and install dry pipe system for new loading dock canopy. Connect to existing wet pipe riser manifold inside building.				
971-20-000347-FIRE		Issued: 8/27/20	Fees: \$2,955.04	Valuation: \$132,500.00
Address: 1785 N FRONT ST, WOODBURN, OR 97071				
Owner: WOODBURN SCHOOL DISTRICT 103				
Licensed Prof:				
Category of Construction: Other		Type of Work: Other		
Work Description: Fire sprinkler system installation for a new building and an addition to an existing building				
971-20-000368-FIRE		Issued: 8/20/20	Fees: \$731.28	Valuation: \$16,800.00
Address: 2215 PROGRESS WAY, WOODBURN, OR 97071				
Owner: IVANOV INVESTMENT GROUP LLC				
Licensed Prof: I & E CONSTRUCTION INC				
Category of Construction: Commercial		Type of Work: New		
Work Description: Install DDCV, DDCV Vault, 280 linear feet of UG fire line, and fire riser.				
971-20-000383-FIRE		Issued: 8/27/20	Fees: \$977.26	Valuation: \$25,000.00
Address: 1785 N FRONT ST, WOODBURN, OR 97071				
Owner: WOODBURN SCHOOL DISTRICT 103				
Licensed Prof:				
Category of Construction: Commercial		Type of Work: Addition		
Work Description: Underground Fire Line				
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Commercial Alarm or Suppression Systems		8 permits issued	\$13,767.95	\$550,633.00

Permits Issued:

Commercial Mechanical							
971-20-000298-MECH		Issued:	8/10/20	Fees:	\$2,217.64	Valuation:	\$120,000.00
Address: 440 PARR RD NE, WOODBURN, OR 97071		Parcel: 052W13 00500					
Owner: WOODBURN SCHOOL DIST #103							
Licensed Prof:							
Category of Construction: Commercial		Type of Work: Addition					
Work Description: Add wall mounted ac units, ductwork, grilles and 4 split systems							
971-20-000351-MECH		Issued:	8/11/20	Fees:	\$653.81	Valuation:	\$20,300.00
Address: 1800 W HAYES ST, WOODBURN, OR 97071		Parcel: 052W12DD06300					
Owner: WOODBURN SCHOOL DISTRICT 103							
Licensed Prof:							
Category of Construction: Other		Type of Work: New					
Work Description: Mechanical Permit for refrigeration for walk in cooler/freezer							
971-20-000352-MECH		Issued:	8/12/20	Fees:	\$630.28	Valuation:	\$19,671.00
Address: 1041 N BOONES FERRY RD, WOODBURN, OR 97071		Parcel:					
Owner:							
Licensed Prof:							
Category of Construction: Other		Type of Work: Replacement					
Work Description: Mechanical Permit for walk in cooler							
971-20-000372-MECH		Issued:	8/25/20	Fees:	\$606.74	Valuation:	\$18,500.00
Address: 1600 MT HOOD AVE, WOODBURN, OR 97071		Parcel: 051W08DB01200					
Owner: LULU LLC							
Licensed Prof:							
Category of Construction: Commercial		Type of Work: Replacement					
Work Description: Push/Pull RTU#4							
Commercial Mechanical				4 permits issued	\$4,108.47	\$178,471.00	

Commercial Structural

971-20-000264-STR		Issued: 8/20/20	Fees: \$6,599.14	Valuation: \$504,715.00
Address: 1440 SILVERTON RD, WOODBURN, OR 97071		Parcel: 051W17C 00500		
Owner: ART MORTGAGE BORROWER PROPCO 2006-2 LP C/O MARVIN F POER & CO				
Licensed Prof:				
Category of Construction: Commercial	Type of Work: Alteration			
Work Description: Prepare existing roofing to be recovered. Mechanically fasten .5" Fanfold board. Mechanically fasten .060 TPO single play membrane. Class A UL fire rated system				
971-20-000349-STR		Issued: 8/11/20	Fees: \$945.10	Valuation: \$34,616.00
Address: 1800 W HAYES ST, WOODBURN, OR 97071		Parcel: 052W12DD06300		
Owner: WOODBURN SCHOOL DISTRICT 103				
Licensed Prof:				
Category of Construction: Other	Type of Work: New			
Work Description: Deferred Submittal Seismic Engineering for walk in cooler/freezer				
971-20-000350-STR		Issued: 8/11/20	Fees: \$767.65	Valuation: \$25,578.76
Address: 1800 W HAYES ST, WOODBURN, OR 97071		Parcel: 052W12DD06300		
Owner: WOODBURN SCHOOL DISTRICT 103				
Licensed Prof:				
Category of Construction: Other	Type of Work: New			
Work Description: Deferred Submittal for Seismic Bracing for kitchen hood				
971-20-000353-STR		Issued: 8/12/20	Fees: \$677.34	Valuation: \$21,206.00
Address: 1041 N BOONES FERRY RD, WOODBURN, OR 97071		Parcel:		
Owner:				
Licensed Prof:				
Category of Construction: Other	Type of Work: Replacement			
Work Description: Deferred Submittal for seismic bracing for walk in cooler				
971-20-000376-STR		Issued: 8/25/20	Fees: \$1,266.28	Valuation: \$51,050.00
Address: 2225 N PACIFIC HWY, WOODBURN, OR 97071		Parcel: 051W08A 01700		
Owner: KARICH LLC				
Licensed Prof:				
Category of Construction: Commercial	Type of Work: Alteration			
Work Description:				
4. Furnish and install new ½" CDX grade plywood prior to installing new roofing.				
5. Furnish and install new Synthetic				
6. Install ice and water shield at the drip edge				
7. Furnish and install new 26-gauge prefinished galvanized metal drip edge, rake edge, and valley flashing prior to installing new composition fiberglass asphalt shingles.				
8. Furnish and install asphalt shingle starter prior to installing new shingles.				
9. Furnish and install new fiberglass asphalt shingles according to manufacturer's specifications.				
10. Furnish and install new no-caulk pipe flashings.				
11. Furnish and install new pre-painted 26-gauge metal roof to wall flashing under siding as needed.				
12. Furnish and install new standard hip and ridge.				

Permits Issued:

Commercial Structural	5 permits issued	\$10,255.51	\$637,165.76
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Permits Issued:

Residential 1 & 2 Fam Dwelling (New Only) Limited

971-20-000272-DWL	Issued: 8/5/20	Fees: \$16,584.61	Valuation: \$227,107.68
Address: 1450 DAHLIA ST, WOODBURN, OR 97071		Parcel: 051W18C 01403	
Owner: WOODBURN DEVELOPMENT LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New Single Family Residence			
971-20-000292-DWL	Issued: 8/4/20	Fees: \$20,430.53	Valuation: \$240,923.43
Address: 1280 E LINCOLN ST, WOODBURN, OR 97071		Parcel: 051W17BA01000	
Owner: TORAN,IOV			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New home.			
971-20-000300-DWL	Issued: 8/11/20	Fees: \$16,590.66	Valuation: \$227,107.68
Address: 1451 DAHLIA ST, WOODBURN, OR 97071		Parcel: 051W18C 01403	
Owner: WOODBURN DEVELOPMENT LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New Single Family Home			
971-20-000301-DWL	Issued: 8/18/20	Fees: \$16,590.66	Valuation: \$227,107.68
Address: 1497 DAHLIA ST, WOODBURN, OR 97071		Parcel: 051W18C 01403	
Owner: WOODBURN DEVELOPMENT LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New Single Family Residence			
971-20-000313-DWL	Issued: 8/5/20	Fees: \$15,313.87	Valuation: \$132,900.00
Address: 1491 DAHLIA ST, WOODBURN, OR 97071		Parcel: 051W18C 01403	
Owner: WOODBURN DEVELOPMENT LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New Single Family Residence			
971-20-000318-DWL	Issued: 8/11/20	Fees: \$15,858.51	Valuation: \$188,179.29
Address: 1447 DAHLIA ST, WOODBURN, OR 97071		Parcel: 051W18C 01403	
Owner: WOODBURN DEVELOPMENT LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: New Single Family Residence			

Permits Issued:**Residential 1 & 2 Fam Dwelling (New Only) Limited****971-20-000337-DWL****Issued:** 8/19/20**Fees:** \$16,175.17**Valuation:** \$206,108.25**Address:** 1475 DAHLIA ST, WOODBURN, OR 97071**Parcel:** 051W18CC15900**Owner:** WOODBURN DEVELOPMENT LLC**Licensed Prof:****Category of Construction:** Single Family Dwelling**Type of Work:** New**Work Description:** New Single Family Dwelling**Residential 1 & 2 Fam Dwelling (New Only) Limited****7 permits issued****\$117,544.01****\$1,449,434.01**

Permits Issued:

Residential Mechanical

971-20-000331-MECH	Issued: 8/3/20	Fees: \$100.80	Valuation: \$0.00
Address: 375 S CASCADE DR, WOODBURN, OR 97071	Parcel: 052W12DD04100		
Owner: MERCHANT, ROBERT			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: install heat pump and air handler			
971-20-000332-MECH	Issued: 8/3/20	Fees: \$140.00	Valuation: \$10,800.00
Address: 685 S COLUMBIA DR, WOODBURN, OR 97071	Parcel: 052W13AB05600		
Owner: PIRKLE, MARK L & PIRKLE, MARLENE & THIEL, GERALDINE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Replace electric furnace/heat pump system with gas furnace & AC. Install gas line with outlet for furnace & water heater. Replace electric water heater with gas & install water heater flue.			
971-20-000333-MECH	Issued: 8/3/20	Fees: \$100.80	Valuation: \$4,910.00
Address: 891 BLAINE ST, WOODBURN, OR 97071	Parcel: 051W17BB05000		
Owner: ANUFRIEV, DIONICE O			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: Install electric furnace and six duct runs in attic for left side of house.			
971-20-000334-MECH	Issued: 8/3/20	Fees: \$100.80	Valuation: \$2,000.00
Address: 1412 ASTOR WAY, WOODBURN, OR 97071	Parcel: 051W07BB15800		
Owner: EMIL, WALLACE P			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: REPLACE AC			
971-20-000335-MECH	Issued: 8/3/20	Fees: \$100.80	Valuation: \$7,500.00
Address: 579 S CASCADE DR, WOODBURN, OR 97071	Parcel: 052W13AA04200		
Owner: CHESTER, MAURICE R & CHESTER, LYNDIA M			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Replace gas furnace Replace air conditioning			
971-20-000339-MECH	Issued: 8/4/20	Fees: \$100.80	Valuation: \$0.00
Address: 1660 THOMPSON RD, WOODBURN, OR 97071	Parcel: 051W07BB08100		
Owner: PARISE, DONALD P			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Installing a new Furn and AC			

Permits Issued:

Residential Mechanical

971-20-000341-MECH	Issued: 8/4/20	Fees: \$100.80	Valuation: \$1,000.00
Address: 352 E CLACKAMAS CIR, WOODBURN, OR 97071	Parcel: 052W12DD03300		
Owner: SCHROEDER, DON & SCHROEDER, MARGO			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Gas stove insert installation PSA 8-10-2020 Install gas fire place insert			
971-20-000343-MECH	Issued: 8/5/20	Fees: \$100.80	Valuation: \$4,000.00
Address: 1440 AUDREY WAY, WOODBURN, OR 97071	Parcel: 051W08DA03500		
Owner: GREILING, GEORGIA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Heat pump replacement			
971-20-000345-MECH	Issued: 8/6/20	Fees: \$100.80	Valuation: \$7,476.00
Address: 350 OLIVE AVE, WOODBURN, OR 97071	Parcel: 052W11AD13700		
Owner: RODRIGUEZ, DEANNA & VEGA, MIGUEL			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: INSTALL GAS FURNACE & AIR CONDITIONER			
971-20-000348-MECH	Issued: 8/10/20	Fees: \$100.80	Valuation: \$0.00
Address: 2591 ROANOKE ST, WOODBURN, OR 97071	Parcel: 051W07BA11700		
Owner: ROTH, DONALD C & ROTH, DIANE J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: replace furnace and air conditioner			
971-20-000355-MECH	Issued: 8/10/20	Fees: \$100.80	Valuation: \$7,062.00
Address: 2885 NATIONAL WAY, WOODBURN, OR 97071	Parcel: 051W05D 03500		
Owner: COPART OF WASHINGTON INC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install air conditioner			
971-20-000356-MECH	Issued: 8/11/20	Fees: \$100.80	Valuation: \$0.00
Address: 1110 W HAYES ST, WOODBURN, OR 97071	Parcel: 051W07CC08100		
Owner: REYES-GASTELUM, MARITZA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: Install gas pipe from gas meter to kitchen range.			

Permits Issued:

Residential Mechanical

971-20-000358-MECH	Issued: 8/11/20	Fees: \$100.80	Valuation: \$6,335.00
Address: 660 ELM ST, WOODBURN, OR 97071		Parcel: 051W17BC01800	
Owner: PARGA, JOSEPH L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install gas furnace & air conditioner			
971-20-000359-MECH	Issued: 8/12/20	Fees: \$100.80	Valuation: \$6,000.00
Address: 1440 AUDREY WAY, WOODBURN, OR 97071		Parcel: 051W08DA03500	
Owner: GREILING, GEORGIA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Mini-split install			
971-20-000361-MECH	Issued: 8/14/20	Fees: \$100.80	Valuation: \$0.00
Address: 1385 GREENVIEW DR, WOODBURN, OR 97071		Parcel: 051W08DA05300	
Owner: HENSLEY, STEPHEN			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: REPLACE GAS FURNACE			
971-20-000364-MECH	Issued: 8/17/20	Fees: \$100.80	Valuation: \$8,100.00
Address: 956 HERMANSON ST, WOODBURN, OR 97071		Parcel: 051W18DC00500	
Owner: BICKEL, CHAD			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Replace furnace and A/C			
971-20-000365-MECH	Issued: 8/18/20	Fees: \$100.80	Valuation: \$7,959.00
Address: 2603 COLONY ST, WOODBURN, OR 97071		Parcel: 051W07BA04300	
Owner: RUIZ-HUSKO, DENISE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Gas Fireplace to Existing Gas			
971-20-000366-MECH	Issued: 8/18/20	Fees: \$100.80	Valuation: \$4,000.00
Address: 2737 CITADEL ST, WOODBURN, OR 97071		Parcel: 052W13AB10000	
Owner: HESSE, JEFFREY O & HESSE, JENNY L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Air conditioner replacement			

Permits Issued:

Residential Mechanical

971-20-000367-MECH	Issued: 8/19/20	Fees: \$100.80	Valuation: \$0.00
Address: 863 HARVEST WAY, WOODBURN, OR 97071		Parcel: 052W13 00102	
Owner: DETOM LLC			
Licensed Prof: ADVANTAGE HEATING AND AIR CONDITIONING LLC			
Category of Construction: Manufactured Dwelling	Type of Work: Addition		
Work Description: 892 Harvest Wy. Install additional new heat pump.			
971-20-000371-MECH	Issued: 8/20/20	Fees: \$100.80	Valuation: \$6,500.00
Address: 555 BROWN ST, WOODBURN, OR 97071		Parcel: 051W18BD08700	
Owner: CHIRILOV, GEORGE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Replace 80% furnace and duct work			
971-20-000374-MECH	Issued: 8/20/20	Fees: \$100.80	Valuation: \$800.00
Address: 1495 COOLEY CT, WOODBURN, OR 97071		Parcel: 051W08DD06400	
Owner: HAMPTON, LINDA J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: AC Replacement			
971-20-000375-MECH	Issued: 8/20/20	Fees: \$100.80	Valuation: \$1,600.00
Address: 65 WORKMAN DR, WOODBURN, OR 97071		Parcel: 051W18BB01900	
Owner: PODAWILTZ, PAULINE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: AC Replacement			
971-20-000377-MECH	Issued: 8/21/20	Fees: \$100.80	Valuation: \$9,074.00
Address: 1209 WILLOW AVE, WOODBURN, OR 97071		Parcel: 052W12BB01200	
Owner: MCBRIDE, RICHARD C & MCBRIDE, DIANA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Install Heat pump			
971-20-000378-MECH	Issued: 8/21/20	Fees: \$100.80	Valuation: \$0.00
Address: 524 E CLACKAMAS CIR, WOODBURN, OR 97071		Parcel: 052W13AA04800	
Owner: KESTERSON, CHERYL A & KESTERSON, EUGENE I			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: REPLACE AC UNIT SAME LOCATION			

Permits Issued:

Residential Mechanical			
971-20-000379-MECH		Issued: 8/24/20	
Address: 515 N CASCADE DR, WOODBURN, OR 97071		Fees: \$100.80	Valuation: \$7,693.00
Owner: JOHNSON, MICHAEL R & JOHNSON, DARLENE M		Parcel: 052W12DD01500	
Licensed Prof:			
Category of Construction:	Single Family Dwelling	Type of Work:	Alteration
Work Description:	Gas Insert		
971-20-000380-MECH		Issued: 8/24/20	
Address: 1347 HAMPTON WAY, WOODBURN, OR 97071		Fees: \$100.80	Valuation: \$4,000.00
Owner: WENTWORTH, STEVE R		Parcel: 051W07BB13600	
Licensed Prof:			
Category of Construction:	Single Family Dwelling	Type of Work:	Replacement
Work Description:	Air conditioner replacement		
971-20-000382-MECH		Issued: 8/25/20	
Address: 1401 ASTOR WAY, WOODBURN, OR 97071		Fees: \$100.80	Valuation: \$2,500.00
Owner: HOWES, THOMAS E		Parcel: 051W07BB16000	
Licensed Prof:			
Category of Construction:	Single Family Dwelling	Type of Work:	Replacement
Work Description:	Replace AC		
971-20-000386-MECH		Issued: 8/28/20	
Address: 850 CHARLES CT, WOODBURN, OR 97071		Fees: \$100.80	Valuation: \$5,675.00
Owner: RODRIGUEZ, GEORGE O & RODRIGUEZ, ELAINE		Parcel: 051W07DD05100	
Licensed Prof:			
Category of Construction:	Single Family Dwelling	Type of Work:	Alteration
Work Description:	Gas Insert & Gas Line		
971-20-000387-MECH		Issued: 8/31/20	
Address: 1495 VAN LIEU CT, WOODBURN, OR 97071		Fees: \$100.80	Valuation: \$5,800.00
Owner: PALAEZ, RAFAEL & PALAEZ, BERTHA ALICIA		Parcel: 051W08CA06300	
Licensed Prof:			
Category of Construction:	Single Family Dwelling	Type of Work:	Replacement
Work Description:	Furnace replacement		
Residential Mechanical			
29 permits issued		\$2,962.40	\$120,784.00

Permits Issued:

Residential Structural

971-20-000340-STR	Issued: 8/20/20	Fees: \$2,482.51	Valuation: \$99,927.36
Address: 1233 JACOB ST, WOODBURN, OR 97071	Parcel: 051W07BD04700		
Owner: ULBRIGHT, STEPHANIE & ULBRIGHT, COLIN & MOONEY,AVA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: 816 sqft of new addition to the home. It will be added to the top and back of the garage. It will include two bedrooms and a full bathroom.			
971-20-000354-STR	Issued: 8/11/20	Fees: \$336.00	Valuation: \$3,200.00
Address: 562 PRAIRIE ST, WOODBURN, OR 97071	Parcel: 052W13BC02900		
Owner: RIPPETEAU, STEPHEN D & RIPPETEAU, LINDA J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Roof Mounted Solar Array 5.695kW Prescriptive Path			
971-20-000357-STR	Issued: 8/21/20	Fees: \$896.44	Valuation: \$28,655.64
Address: 1047 COUNTRY LN, WOODBURN, OR 97071	Parcel: 051W18CB13500		
Owner: RIVERA, ROSALINA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: 234 sqft. of new addition to home includes bedroom and bathroom			
971-20-000362-STR	Issued: 8/19/20	Fees: \$372.17	Valuation: \$17,262.00
Address: 1090 GARFIELD ST, WOODBURN, OR 97071	Parcel: 051W07CC11800		
Owner: MCBANE, MITCHELL L & MCBANE, CLARA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Removing window and door and widen opening for four panel door to be installed.			
971-20-000373-STR	Issued: 8/24/20	Fees: \$336.00	Valuation: \$17,037.40
Address: 2555 BROADMORE PL, WOODBURN, OR 97071	Parcel: 051W07AA06400		
Owner: CARR, KEVIN M & CARR, LISA H			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: INSTALLATION OF UTILITY INTERACTIVE PHOTOVOLTAIC SOLAR SYSTEM 7.56 kW DC PHOTOVOLTAIC SOLAR ARRAY ROOF TYPE: Comp Shingle MODULES: (24) Jinko Solar JKM315M-60L INVERTER(S): Enphase Energy - IQ7-60-2-US,---- RACKING: Unirac SFM Infinity			
971-20-000384-STR	Issued: 8/31/20	Fees: \$317.46	Valuation: \$7,347.60
Address: 2510 PATRIOT ST, WOODBURN, OR 97071	Parcel: 051W07BA08400		
Owner: HERRERA, ADAN			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: 60 sqft. addition to existing bedroom above garage.			

Permits Issued:

Residential Structural	6 permits issued	\$4,740.58	\$173,430.00
<hr/>			
59 permits issued		\$153,378.92	\$3,109,917.77

September 14, 2020

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director *CK*,
Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: **Continuance of Council Call-up Hearing of Planning Commission approval of Allison Way Apartments (Design Review DR 2019-05, Phasing Plan PP 2019-01, Property Line Adjustment PLA 2019-04, Street Exception EXCP 2020-05, and Variances 2019-04)**

RECOMMENDATION:

After hearing additional public testimony, the Council may act on the consolidated land use applications package or individual applications to:

1. Approve with the modified conditions (as specified below) or
2. Deny, based on Woodburn Development Ordinance (WDO) criteria or other City provisions.

BACKGROUND:

On June 8, 2020, the Council called up the Planning Commission decision to approve the Allison Way Apartment application. On July 13, 2020, the Council, after hearing the staff presentation and testimony from the public and applicant decided to continue the public hearing in order to permit the applicant to modify the plans in response to comments received at the hearing.

Since the July 13 hearing, the applicant significantly modified the proposal and submitted the attached exhibits: (1) an explanatory cover letter dated September 1, (2) narrative, (3) drive aisle memo, and (4) four drawings. Because the proposal has been modified, an opportunity for additional public testimony must be provided.

DISCUSSION

Generally, the revised plans provide the same number of units with more parking spaces by making minor changes to the site plan, which reduces the greenspaces and narrows several parking aisles. The revisions still necessitate variance approvals but the revised plans clearly reflect Council direction to greatly lessen how much they vary from the WDO.

Summary of the Six (6) Variance Requests

Below is a staff summary on each variance in relation to the attached applicant's exhibits:

1. Driveway width minimum: To have driveways narrower than 24 feet (ft.), typically either 20 ft. or wider where and as Oregon Fire Code requires;

What changed: Though the revisions still depend on a variance approval, they clearly reflect Council direction by greatly lessening how much it varies. (See the last attachment, last sheet: Exhibit 61 Site Plan – Drive Aisles.)

2. Parking ratio minimum: To have off-street parking equal a rate less than 2.0 spaces or stalls per dwelling, specifically 1.77 per dwelling;

What changed: Though the revisions still depend on a variance approval, they clearly reflect Council direction by greatly lessening the variance, moving from 1.77 to 1.9 spaces per dwelling. The ratio of 1.9 (1,113 spaces) varies 5.0% from the WDO standard of 2.0 (1,172 spaces).

3. Compact parking percentage maximum: To have the percentage of minimum off-street parking that is compact parking be more than 20%, specifically 60%;

What changed: Though the revisions depend on a variance approval, they clearly reflect Council direction by greatly lessening the variance, moving from 53.5% to 25.0%.

4. Drive aisle width minimum: To have drive aisles narrower than 25 ft., typically either 20 ft or wider where and as Oregon Fire Code requires;

What changed: Though the revisions depend on a variance approval, they clearly reflect Council direction by greatly lessening how much it varies.

Most drive aisles are at least 24 ft. wide, and those in the “parking courts” remain at 20 ft.

5. Parking area curb height minimum: To have on-site curbs smaller than 6 inches, specifically 4 inches;

What changed: No changes to what the Commission had approved.

6. Architectural Wall: To not have a buffer or screen wall that the WDO terms an “Architectural Wall”, specifically instead to plant a landscaped buffer and, along the closest parking areas, treated cedar wood fence about 6 ft. high.

What changed: No changes to what the Commission had approved.

Stacy Allison Way Bicycle Lanes

During the July 13 hearing, the Council expressed the desire to have bicycle lanes on both sides of Stacy Allison Way. The current Condition EX2 would not do so. To correct this, the Council would need a motion to approve the Street Exception application with the Commission conditions except that Stacy Allison Way will have 5-ft bike lanes (see below).

Proposed Motions

After closing the public hearing, if the Council decides to grant approval, staff recommends that the Council act through several motions, as suggested below:

Motion 1: Approval of Design Review, Property Line Adjustment and Phasing Plan

“I move that the City Council tentatively approve Design Review 2019-05, Property Line Adjustment 2019-04 and Phasing Plan 2019-01 with the Planning Commission conditions and direct staff to prepare a final decision document for Council consideration.”

Motion 2: Approval of Street Exception

“I move that the City Council tentatively approve Street Exception 2020-05 with the Planning Commission conditions, except that Stacy Allison Way shall have 5-foot wide bicycle lanes, and direct staff to modify the conditions and prepare a final decision document for Council consideration.”

Motion 3: Approval of all six (6) Variances

If the Council agrees with all six (6) variances, including the lesser degree of variance as the applicant's letter exhibit proposes regarding parking ratio and compact parking percentage, only one motion is necessary:

"I move that the City Council tentatively approve Variance 2019-04, which consists of the six (6) variances summarized in the staff report, and direct staff to prepare a final decision document for Council consideration incorporating the parking ratio and compact parking numerical standards per the applicant's letter exhibit."

If the Council does not agree with all six (6) variances, then it must use separate motions to address each variance.

FINANCIAL IMPACT

None.

Attachments:

1. Applicant's cover letter (September 1, 4 pages)
2. Applicant's narrative (September 1, 14 pages):
3. Exhibit memo "Allison Way Drive Aisle Width" (August 3, 3 pages)
4. Applicant's drawings (August 3, 6 site plan sheets):
 - Exhibit 3 Site Plan - Overall
 - Exhibit 4 Site Plan - Phase 1
 - Exhibit 5 Site Plan - Phase 2
 - Exhibit 6 Site Area Calculations - Phase 1
 - Exhibit 7 Site Area Calculations - Phase 2
 - Exhibit 61 Site Plan - Drive Aisles



308 SW First Avenue
Suite 200
Portland Or 97204
Phone 503.228.2840
leebarc.com

01 September 2020

Mayor Swenson & Woodburn City Council
c/o Chris Kerr, Community Development Director
City of Woodburn Community Development Department
970 N. Cascade Drive
Woodburn, OR 97071

Reference: DR 2019-05, PLA 2019-04, PP 2019-01 & VAR 2019-04 "Allison Way Apartments" for Tax Lots 052W14 020000, 2100, & 2300 (three undeveloped, unaddressed lots along Stacy Allison Way); Accela record no. 971-19-000094-PLNG
Subject: Proposed Land Use Review Revisions

Dear Mayor Swenson and Councilors,

In response to comments received during the 7/13/20 Woodburn City Council Meeting, please find the attached revisions to the Allison Way Apartments land use review narrative, exhibits and additional supporting documents for your consideration. The proposal has been revised as follows:

1. The five main courtyards were narrowed to provide as much parking as possible. Ground floor patios are now located 2' into the 5' Hooper Street setbacks as permitted by WDO 3.03.03E. Because these setbacks also serve as 5' public utility easements, the City Engineer has provided conditions of approval for the 8 patio encroachments.
2. The ratios of compact spaces and parking spaces per unit were revised to meet zoning code requirements as closely as possible. Parking was increased from 1.77 to 1.9 spaces per unit and compact spaces were reduced from 53.5% overall to 25%.
3. Drive aisles are 24 feet minimum at all locations except 20 feet as indicated at the three main parking lots facing Stacy Allison Way (see new Exhibit 61).
4. The southernmost driveway on Stacy Allison Way was removed to reduce traffic conflicts and to increase on-site parking.
5. The unit mix of a few building types were changed slightly (more 1-bedroom units) but the total unit count is unchanged.
6. Although the landscape plans are not included in this resubmittal, staff will review all applicable landscaping requirements of the zoning code and Condition of Approval V4-6 Architectural Wall during the plan review process.



Three parking variances were the subject of the most discussion at the last Council meeting. The revised proposal still requests the three variances, but now provides parking much closer to what is required by the zoning code:

PARKING VARIANCES:

1. Parking Ratio (WDO Table 3.05A)

Required: 2 spaces per unit.

Proposed: 1.9 spaces per unit.

2. Compact Parking (WDO Table 3.05.03C)

Required: 20% maximum.

Proposed: 25% maximum.

3. Drive Aisle Width (WDO Table 3.05C)

Required: 24 feet minimum.

Proposed: 24 feet minimum except 20 feet at 25% of stalls maximum.

Staff attached the following Conditions of Approval to mitigate the parking variance requests. Because these conditions are above and beyond what is required by the zoning code, we feel they justify granting the requested variances:

PARKING CONDITIONS OF APPROVAL:

1. Bike Parking (WDO Section 3.05.03E)

Required: One space per ten vehicle parking spaces, with a maximum of 20 rack spaces: $1117 \text{ vehicle spaces} / 10 = 112 \text{ spaces minimum required}$.

Condition of Approval (V6-3-2a & b): $1.2 \text{ spaces per unit} = 704 \text{ spaces minimum}$.

Proposed: 758 spaces.

2. Electric Vehicle Ready Parking (OAR 918-020-0380)

Required: Not adopted by the City of Woodburn. Requires the installation of an electrical conduit system and electrical service for the future installation of electric vehicle charging stations at 5% of parking spaces. The installation of the electric vehicle charging stations is not required.

Condition of Approval (V6-3-2e): Full installation of 36 electric vehicle charging stations.

Proposed: As conditioned.



3. Public Plaza

Required: Not required.

Condition of Approval (V7-3-3): An approximately 3,000 sf public access easement and public park is to be provided in Phase 1 with landscaping, signage, pavement, seat walls, benches, drinking fountains, bicycle racks, trash receptacles and an ornamental fountain as requested and specified by staff.

Proposed: As conditioned. To address Woodburn's lack of parks in the southwestern area of the city, the applicant has voluntarily agreed to provide an access easement and a public plaza with amenities benefitting the neighborhood on a portion of the site that would otherwise be dedicated to required vehicle parking.

4. Parking Management

Required: Not required.

Condition of Approval (V8-3-4): The applicant is to collect data regarding off-street parking usage and provide half-yearly reports to the City of Woodburn through July 1, 2031.

Proposed: As conditioned. The applicant has voluntarily agreed to provide these reports to aid the City in its analysis of how parking is used in conventional large apartment complexes.

Condition of Approval D7 for railings or fencing at ground floor patios is also requested to be removed. The condition is not a zoning code requirement and does not support any of requested variances.

GROUND FLOOR PATIO CONDITION OF APPROVAL

Private Open Space (WDO Section 3.07.05B1a.2)

Required: Ground level private open space should/shall* be visually and physically separated from common open space, through the use of perimeter landscaping or fencing.

*For Type III reviews, these requirements are to be read as "should" and are applied as guidelines only:

Condition of Approval (D7):

- a. Pavement: As proposed, patios shall be paved with brick, concrete pavers, or poured concrete.
- b. Railings/fencing & gate: The outermost edges of patio concrete slabs that do not abut building walls shall have either metal or wood railings or cedar wood fencing at least three (3) ft high. If the latter, then opacity shall be full, but if fencing is higher than the minimum height, it shall be no more than ninety



percent (90%) opaque, such as by being fully opaque from grade but from the top having a lattice pattern. The railings or fencing shall have a gated opening at least two (2) ft and four (4) inches wide.

- c. Height maximum: the railings or fencing maximum height shall be either five (5) ft or, where a patio faces a courtyard, three and a half (3½) ft.
- d. Shrubbery: Evergreen shrubbery shall line fully the outermost edges of patio concrete slabs, except along the gated opening.

Proposed: Perimeter landscaping at ground floor patios as suggested by the zoning code guideline. The developer would prefer to avoid the management and maintenance issues associated with ground floor railings and gates.

The applicant and design team have worked closely with planning and engineering staff to follow their direction and provide everything that has been requested. West Coast Home Solutions is dedicated to making this a successful project that will benefit residents, the neighborhood and the City of Woodburn.

We hope the revisions to our proposal address your concerns and you agree that the conditions of approval justify the requested variances. We thank you for pushing us to create a better project and look forward to making it happen!

Sincerely,
Leeb Architects

Doug Hamilton

TABLE OF CONTENTS

Project Team

Project Information

Requested Land Use Reviews

Zoning Compliance Narrative

Response to Woodburn Development Ordinance Review Criteria & Development Standards

- Section 1 - Definitions
- Section 2 - Zoning District Regulations
- Section 3.01 - Streets
- Section 3.02 - Utilities and Easements
- Section 3.04 - Vehicular Access
- Section 3.05 - Off-Street Parking and Loading
- Section 3.06 - Landscaping
- Section 3.07 - Architectural Design
- Section 3.10 - Signs
- Section 5.03.12 - Variance

Appendix

Property Line Adjustment Narrative – 06/04/19

Exhibits

Illustrations and Drawings – 03/25/20

- 03 Site Plan - Overall – 09/01/20
- 04 Site Plan - Phase 1 – 09/01/20
- 05 Site Plan - Phase 2 – 09/01/20
- 06 Site Area Calculations - Phase 1 – 09/01/20
- 07 Site Area Calculations - Phase 2 – 09/01/20
- 61 Site Plan - Drive Aisles – 09/01/20

Attachments

- Uniform Application – 05/30/19 REV1
- Property Line Adjustment Application – 06/03/19
- Preliminary Conveyance Computations - Allison Way Road – 11/06/19
- Preliminary Detention Sizing and Conveyance Computations - North – 11/06/19
- Preliminary Detention Sizing and Conveyance Computations - South – 11/06/19
- Street Exception Request – 03/23/20
- Draft Access Easement – 03/23/20
- Traffic Impact Analysis – 03/23/20

Attachment 2

PROJECT TEAM

Owner: **West Coast Home Solutions**
25030 SW Parkway Ave, Suite 110
Wilsonville, OR 97070
Eugene Labunsky
Email: eugenel.wchs@gmail.com
Phone: 503-989-1613

**Architect/
Applicant:** **Leeb Architects**
308 SW First Ave, Suite 200
Portland, Oregon 97204
Robert Leeb
Email: robert@leebarc.com
Phone: 503-228-2840

Civil Engineer: **LEI Engineering & Surveying**
2564 19th Street SE
Salem, Oregon 97302
Jamie Van Agtmael
Email: jamie@leiengineering.com
Phone: 503-399-3828

**Landscape
Architect:** **Shapiro Didway**
1204 SE Water Ave., Suite 21
Portland, Oregon 97214
Aaron West
Email: aaron@shapiro-didway.com
Phone: 503-232-0520

PROJECT INFORMATION

Location: Stacy Allison Way NE & Hooper Street, Woodburn, Oregon

Tax Lots: 051W14 02000, 02100 & 02300

Project Data:

Uses:	Multifamily apartments
Site Area:	828,838 sf (19.03 acres)
Gross Building Area:	529,294 533,242 sf (excludes breezeways, patios & decks, includes storage closets)
Building Coverage Area:	219,541 221,123 sf (includes all the above)
Parking Spaces:	1,117 1,039 spaces
	1,143 1,065 spaces with street parking

Project Description: 23 three-story apartment buildings, two clubhouses, carports and trash enclosures. 586 units consisting of 1,2 & 3-bedroom apartments with parking.

Base Zone: Commercial General (CG)

REQUESTED LAND USE REVIEWS

- Type III Design Review
- Type III Variances to the following sections:
 1. Table 3.04(A) – Paved Width of Driveway
 2. Section 3.05.03(A) – Off-Street Parking Ratio
 3. Section 3.05.03(C) – Compact Parking Percentage
 4. Section 3.05.03(D) – Drive Aisle Width
 5. Section 3.06.02(I) – Concrete Curb Height
 6. Table 3.06(D) – Architectural Wall Screening Requirements
- Type III Exception to Street Right of Way and Improvement Requirements
- Type I Property Line Adjustment/ Consolidation of Lots

ZONING COMPLIANCE NARRATIVE

Response to Woodburn Development Ordinance Review Criteria & Development Standards

Section 1.02 - Definitions

Standard	N/A	Findings
1.02 Definitions: Lot	<input type="checkbox"/>	The attached recorded deeds indicate the property is composed of legal lots of record. The requirements of this section are satisfied.

Section 2.03 - Commercial Zones

Standard	N/A	Findings																						
Table 2.03A – Uses Allowed in Commercial Zones	<input type="checkbox"/>	Per Item E.4, multiple-family dwellings are an allowed use in the Commercial General (CG) zone. The requirements of this section are satisfied.																						
Table 2.03C – Commercial General (CG) Site Development Standards	<input type="checkbox"/>	The following site development standards apply: <table><tr><td>Lot Area, Minimum (square feet):</td><td>No minimum</td></tr><tr><td>Lot Width, Minimum (feet):</td><td>No minimum</td></tr><tr><td>Lot Depth, Minimum (feet):</td><td>No minimum</td></tr><tr><td>Street Frontage, Minimum (feet):</td><td>No minimum</td></tr><tr><td>Front Setback & Setback Abutting a Street, Minimum (feet):</td><td>5</td></tr><tr><td>Side or Rear Setback, Minimum (feet)</td><td></td></tr><tr><td> Abutting RS zone:</td><td>10</td></tr><tr><td> Abutting CG zone:</td><td>5</td></tr><tr><td>Setback to a Private Access Easement, Minimum (feet):</td><td>5</td></tr><tr><td>Residential Density (units per net acre)</td><td></td></tr><tr><td> Minimum:</td><td>12</td></tr></table>	Lot Area, Minimum (square feet):	No minimum	Lot Width, Minimum (feet):	No minimum	Lot Depth, Minimum (feet):	No minimum	Street Frontage, Minimum (feet):	No minimum	Front Setback & Setback Abutting a Street, Minimum (feet):	5	Side or Rear Setback, Minimum (feet)		Abutting RS zone:	10	Abutting CG zone:	5	Setback to a Private Access Easement, Minimum (feet):	5	Residential Density (units per net acre)		Minimum:	12
Lot Area, Minimum (square feet):	No minimum																							
Lot Width, Minimum (feet):	No minimum																							
Lot Depth, Minimum (feet):	No minimum																							
Street Frontage, Minimum (feet):	No minimum																							
Front Setback & Setback Abutting a Street, Minimum (feet):	5																							
Side or Rear Setback, Minimum (feet)																								
Abutting RS zone:	10																							
Abutting CG zone:	5																							
Setback to a Private Access Easement, Minimum (feet):	5																							
Residential Density (units per net acre)																								
Minimum:	12																							

		Maximum: 32
		Building Height, Maximum (feet): 70
		The attached site plan and elevations indicate the proposed buildings meet setback requirements and height restrictions. The proposed residential density for the site (586 units/ 19.03 acres = 30.8 units per acre) falls within zoning minimum and maximum thresholds.
		The requirements of this section are satisfied.

Section 2.06 - Accessory Structures

Standard	N/A	Findings
2.06.02 – Fence and Walls	<input checked="" type="checkbox"/>	There are no fences proposed in the locations described in this section. The requirements of this section are not applicable.
2.06.03 – Structures	<input type="checkbox"/>	The attached site plan indicates detached accessory structures are located greater than six feet from primary buildings The requirements of this section are satisfied.

Section 3.01 - Streets

Standard	N/A	Findings
3.01.04 – Street Cross-Sections	<input type="checkbox"/>	Stacy Allison Way: The existing street cross section consists of an off center 74' right of way, two 12' travel lanes, an 11' turn lane, two 6.5' bike lanes, a 6' sidewalk without a landscape strip and a 5' public utility easement which is non-compliant with its designation as Service Collector. The attached site plan indicates the existing cross section of Stacy Allison Way to remain and the new extension to match existing. A Street Improvements Exception Application and Narrative are attached. Hooper Street: The existing street cross section of consists of a 60' right of way, two 11' travel lanes, two 6' bike lanes, a 7' landscape strip, a 5.5' sidewalk and a 5' public utility easement which is non-compliant with its designation as a Local Residential Street with Parking Both Sides, 60 Foot Right-of-Way. The attached site plan indicates improvements bring the street into compliance.
3.01.05(B) – Block Standards	<input type="checkbox"/>	Staff to provide direction on any required access easements or connections to adjacent properties. The requirements of this section have been included in the Conditions of Approval are to be determined.

Section 3.02 - Utilities and Easements

Standard	N/A	Findings
3.02.01 – Public Utility Easements	<input type="checkbox"/>	Per 3.02.01(A) & (B), the attached civil property line adjustment site plan indicates a 5' PUE along the south side of Hooper Street and along the extension of Stacy Allison Way. The requirements of this section are satisfied. Conditions of Approval are to be added for 2' patio encroachments on Hooper Street.
3.02.03 – Street Lighting	<input type="checkbox"/>	Site electrical plans including street lighting are attached. The requirements of this section are satisfied.

Section 3.04 – Vehicular Access

Standard	N/A	Findings
3.04.03 – Driveway Guidelines and Standards	<input type="checkbox"/>	The attached site plan proposes the southernmost driveway and the two driveways adjacent to the intersection of Stacy Allison Way and Hooper Street with less than the 24' minimum required width per Table 3.04A. The requirements of this section are <u>not</u> satisfied. See Variance #1 for the minimum driveway width. The attached site plan also proposes the two driveways at the intersection of Stacy Allison Way and Hooper Street with less than the 30' minimum corner clearance per Table 3.04A. Although the requirements of this section are not satisfied, the minimum clearance is indicated as a "guideline" with the footnote that "The separation should be maximized." The driveways are proposed with 24' corner clearance in order to maximize the available off-street parking and simplify the access drive. Adherence the guideline would result in at least 12 fewer parking spaces with driveways awkwardly offset from the drive aisles.
3.04.05 – Traffic Impact Analysis	<input type="checkbox"/>	A traffic impact analysis is attached. The requirements of this section are satisfied.

Section 3.05 – Off-Street Parking and Loading

Standard	N/A	Findings
3.05.02(E)(1 & 2) – Setback	<input type="checkbox"/>	The attached site plan indicates parking, loading and circulation areas set back 5' minimum from the street and property lines. The requirements of this section are satisfied.
3.05.02(H) – General Provisions	<input type="checkbox"/>	The attached site plan indicates wheelstops to prevent vehicles from damaging structures, projecting over walkways to leave less than

		four feet of unobstructed passage, or projecting over access ways, abutting properties or ROWs. The requirements of this section are satisfied.
3.05.02(K) – General Provisions	<input type="checkbox"/>	The attached site plan indicates parking spaces delineated by double parallel lines. The requirements of this section are satisfied.
3.05.02(L) – General Provisions	<input type="checkbox"/>	The attached electrical site drawings indicate: <ol style="list-style-type: none"> 1. Clubhouse parking areas illuminated at an average of 0.2 horizontal foot-candles at ground level with a maximum uniformity ratio of 20:1 (maximum to minimum). 2. Clubhouse entrance areas illuminated at an average of 0.5 horizontal foot-candles at ground level with a maximum uniformity ratio of 15:1 (maximum to minimum). 3. Clubhouse illumination does not shine or reflect onto residentially zoned property or a public street. The attached electrical drawings indicate full cut-off or fully shielded light fixtures with wall-mounted and pedestrian area pole-mounted fixtures at 8' above walkway grades and parking area pole mounted fixtures at 12' – 14' above pavement grade. The requirements of this section are satisfied.
3.05.03(A) – Off-Street Parking	<input type="checkbox"/>	The attached site plan indicates a parking ratio of less than 2 spaces/ dwelling unit. Per OAR 918-020-0380, the attached site plan indicates 5% of parking spaces with a conduit system for the future installation of electric vehicle charging stations and a Condition of Approval requires the full installation of 36 electric vehicle charging stations. The requirements of this section are <u>not</u> satisfied. See Variance #2 for the off-street parking ratio in Section 5.03.12 Variance.
3.05.03(B) – Off-Street Parking	<input type="checkbox"/>	The attached site plan indicates the number of accessible spaces exceeds the minimum requirements of Table 3.05B (20 plus 1 for each 100 spaces over 1,000). A total of 1,117 1,039 parking spaces are proposed, including 36 24 accessible spaces (36 24 required). The attached site plan indicates the number of van accessible spaces exceeds the minimum requirements of Table 3.05B (1 per 8 accessible spaces). A total of 8 7 van accessible spaces are proposed (7 3 required). Per the building code, where five or more parking spaces are designated accessible, any space that is designated as van accessible shall be reserved for wheelchair users. The requirements of this section are satisfied.
3.05.03(C) – Off-Street Parking	<input type="checkbox"/>	The attached site plan indicates more than 20 percent of the required vehicle parking spaces as compact vehicle parking spaces.

		The requirements of this section are <u>not</u> satisfied. See Variance #3 for the percentage of compact parking spaces in Section 5.03.12 Variance.
3.05.03(D) – Off-Street Parking	<input type="checkbox"/>	<p>The attached site plan indicates the following parking dimensions:</p> <p>Standard or Accessible (feet): 9 x 17 (9 x 19 at access ways)</p> <p>Compact (feet): 7.5 x 13 (7.5 x 15 at access ways)</p> <p>Car Accessible Aisle (feet): 6 x 19</p> <p>Van Accessible Aisle (feet): 8 x 19</p> <p>Drive Aisle Width (feet): 20 & 24 (2-way)</p> <p>Aerial Access/ Fire Hydrant Drive Aisle Width (feet): 26 (2-way)</p> <p>Note that per Item 1, a parking space may occupy up to two feet of a landscaped area or walkway and at least four feet clear width of a walkway must be maintained. 4" high concrete curbs are indicated to allow overhangs at compact parking stalls.</p> <p>Except for drive aisle width, the requirements of this section are satisfied. See Variance #4 for drive aisle width in Section 5.03.12 Variance.</p>
3.05.03(E) – Off-Street Parking	<input type="checkbox"/>	<p>The attached site plan indicates the number bicycle racks exceeds the minimum requirement (1 space per ten vehicle parking spaces, with a maximum of 20 rack spaces). Two rack spaces are proposed within each apartment breezeway and an additional 68 racks are proposed throughout the site for a total of 172 2'x6' spaces. Outdoor storage closets with a wall-mounted rack space are also proposed for additional bicycle storage within each of the units.</p> <p>The requirements of this section are satisfied.</p>
3.05.03(F)(2) – Off-Street Parking	<input type="checkbox"/>	<p>Per 3.05.03(F)(2) and the 12/15/18 pre-app memo, the attached site plan indicates carports over one-half of the required parking spaces.</p> <p>The requirements of this section are satisfied.</p>

Section 3.06 - Landscaping

Standard	N/A	Findings
3.06.02(I) – Concrete Curb Height	<input type="checkbox"/>	<p>4" high concrete curbs are indicated typically to allow parking overhangs at compact parking stalls.</p> <p>The requirements of this section are <u>not</u> satisfied. See Variance #5 for the concrete curb height in Section 5.03.12 Variance.</p>
3.06.03(A) – Street Trees	<input type="checkbox"/>	<p>The attached landscaping plans indicate one large street tree planted within the ROW per every 50' of street frontage.</p> <p>The requirements of this section are satisfied.</p>

3.06.03(B) – Landscaping Standards	<input type="checkbox"/>	The attached landscaping plans indicate plantings per Table 3.06A Planting Requirements & Table 3.06B Plant Unit (PU) Value. The requirements of this section are satisfied.
3.06.05 – Screening	<input type="checkbox"/>	Per Table 3.06D Screening Requirements, the attached trash enclosure plan and details indicate architectural walls around the refuse/ recycling areas and the attached landscaping plan indicates landscaping between the property and the adjacent RS zone. Except for the screening material at the adjacent RS zone, the requirements of this section are satisfied. See Variance #6 for landscaping in lieu of an architectural wall in Section 5.03.12 Variance.

Section 3.07 – Architectural Design

Standard	N/A	Findings
3.07.05(B)(1)(a) – Ground Level Courtyard	<input type="checkbox"/>	The attached site plan indicates ground floor units with a 100 sf concrete patio to meet the minimum requirement of 96 sf of private open space. The attached landscaping plan indicates perimeter landscaping around the private open space. The requirements of this section are satisfied.
3.07.05(B)(1)(b) – Balcony	<input type="checkbox"/>	The attached site plan indicates upper floor units to have 6' x 8' balconies. The requirements of this section are satisfied.
3.07.05(B)(2) – Common Open Space and Facilities	<input type="checkbox"/>	The attached site plans indicate 31% 35% of the net site area of the north lot and 32% 36% of the net site area of the south lot is designated for use as common open space. A 48' x 54' 60' common area (2,592 2,880 sf) is indicated on both lots. Recreation area is provided as follows: Interior: 2,460 sf @ 12 sf/unit = 205 units Exterior: 24,657 31,043 sf @ 36 sf/unit = 685 862 units Total: 890 1,067 units (586 units proposed) The requirements of this section are satisfied.
3.07.05(C)(1)(a) – Building Mass and Facade	<input type="checkbox"/>	The attached residential building elevations indicate building lengths exceeding 150' (194' proposed). The requirements of this section are <u>not</u> satisfied.*
3.07.05(C)(1)(b) – Building Mass and Facade	<input type="checkbox"/>	The attached site plan indicates every two attached dwelling units are not offset by at least four feet in depth. The requirements of this section are <u>not</u> satisfied.*

* For a Type III review, the criteria of this section shall be read as “should” and shall be applied as guidelines per Section 3.07.05(A).

3.07.05(C)(1)(c) – Building Mass and Facade	<input type="checkbox"/>	The attached site plan indicates individual buildings located with 28' of a property line do not have a varied setback of at least four feet. The requirements of this section are <u>not</u> satisfied.*
3.07.05(C)(1)(d) – Building Mass and Facade	<input type="checkbox"/>	The attached residential building elevations indicate roof ridges exceeding a horizontal length of 100' are provided a difference in elevation of less than four feet. The requirements of this section are <u>not</u> satisfied.*
3.07.05(C)(1)(e) – Building Mass and Facade	<input type="checkbox"/>	The attached site plan indicates recessed entries for each ground-level dwelling unit are provided by breezeways. The requirements of this section are satisfied.
3.07.05(C)(1)(f) – Building Mass and Facade	<input type="checkbox"/>	The attached residential building elevations indicate windows in habitable rooms facing the front yard. The requirements of this section are satisfied.
3.07.05(C)(1)(g) – Building Mass and Facade	<input type="checkbox"/>	The attached residential building elevations indicate staircases providing access above the first floor level are visible from the street. The requirements of this section are <u>not</u> satisfied.*
3.07.05(C)(2)(a) – Building Materials, Texture and Color	<input type="checkbox"/>	The attached residential building elevations indicate varied lap and shingle siding finishes with “earth tone” colors. The requirements of this section are satisfied.
3.07.05(C)(2)(b) – Building Materials, Texture and Color	<input type="checkbox"/>	The attached residential building elevations indicate the roofing material as composition shingles with a certified performance of at least 25 years. The requirements of this section are satisfied.
3.07.05(C)(3)(a) – Pedestrian Circulation	<input type="checkbox"/>	The attached site plan indicates an internal pedestrian system connecting building entrances and the street. The requirements of this section are satisfied.
3.07.05(C)(3)(b) – Pedestrian Circulation	<input type="checkbox"/>	The attached site plan indicates residential buildings sited within 24 feet of the street ROW with entrances directly accessible from the street. The requirements of this section are satisfied.
3.07.06(B)(1) – Mass and Bulk Articulation Guidelines	<input type="checkbox"/>	The attached clubhouse building elevations indicate articulated facades with a public doorway, offset walls, varied building materials and an entry porch. The requirements of this section are satisfied.

* For a Type III review, the criteria of this section shall be read as “should” and shall be applied as guidelines per Section 3.07.05(A).

3.07.06(B)(2) – Mass and Bulk Articulation Guidelines	<input type="checkbox"/>	The attached clubhouse building elevations indicate varied lap and shingle-style siding finishes with “earth tone” colors. The requirements of this section are satisfied.
3.07.06(B)(3) – Multi-Planed Roof Guidelines	<input type="checkbox"/>	The attached clubhouse building elevations indicate a sloped roof with a distinctive ridge line. The requirements of this section are satisfied.
3.07.06(B)(4) – Roof Mounted Equipment Guidelines	<input checked="" type="checkbox"/>	No roof mounted equipment is proposed. The requirements of this section are not applicable.
3.07.06(B)(5) – Weather Protection Guidelines	<input type="checkbox"/>	The attached clubhouse building elevations indicate colors and siding finishes consistent with the residential buildings and an 18’ wide entry porch. The requirements of this section are satisfied.
3.07.06(B)(6) – Solar Access Protection	<input checked="" type="checkbox"/>	There are no existing solar collectors on abutting properties. The requirements of this section are not applicable.

Section 3.10 – Signs

Standard	N/A	Findings
3.10 - Signs	<input checked="" type="checkbox"/>	Design Review excludes signage which will be permitted separately. The requirements of this section are not applicable.

Section 5.03.12 – Variance

Standard	N/A	Findings
5.03.12 – Variance		Per 5.03.12 (B): B. Criteria: A variance may be granted to allow a deviation from development standard of this ordinance where the following criteria are met: 1. Strict adherence to the standards of this ordinance is not possible or imposes an excessive burden on the property owner, and 2. Variance to the standards will not unreasonably impact existing or potential uses or development on the subject property or adjacent properties. The following variances are requested:
Variance #1		Table 3.04(A) – Paved Width of Driveway <u>Requires:</u> The minimum required width for five or more dwelling units is 24’. <u>Proposed:</u> 20’ drive aisles are proposed at three locations on the south lot (26’ at aerial fire access drive aisles).

		<p><u>Criteria #1:</u> 20' driveway widths are proposed in conjunction with 20' drive aisle widths (see Variance #4).</p> <p><u>Criteria #2:</u> Adjacent properties will not be affected by the proposed driveway width. Minimum required driveway widths for aerial fire access will be maintained.</p>
Variance #2		<p>Table 3.05(A) – Off-Street Parking Ratio</p> <p><u>Requires:</u> Off-street parking spaces shall be provided at the ratio of 2 spaces per dwelling unit (586 units x 2 spaces/unit = 1,172 spaces required).</p> <p><u>Proposed:</u> 1.9 1.77 spaces per dwelling unit overall. (1,039 spaces). <u>The minimum ratio per unit type is proposed as follows:</u></p> <p style="padding-left: 40px;">1-Bedroom: 1.6 1.75 spaces/ unit x 164 148 units = 263 259 2-Bedroom: 2.0 1.75 spaces/unit x 376 390 units = 752 683 3-Bedroom: 2.0 spaces/unit x 46 48 units = 92 96 Total (minimum): 1,107 1,038 spaces</p> <p>Although less than the minimum required, the proposed ratios are is well within the parking requirements of neighboring cities. The attached Parking Rates Comparison Table provides the average parking ratio of Woodburn and twelve surrounding communities. When applied to this project, these ratios total 907 spaces, 210 132 less than what is proposed:</p> <p style="padding-left: 40px;">1-Bedroom: 1.25 spaces/ unit x 148 units = 185 2-Bedroom: 1.63 spaces/unit x 390 units = 636 <u>3-Bedroom: 1.79 spaces/unit x 48 units = 86</u> Total: 907 spaces</p> <p>We also believe the proposed ratio will suffice for the demand for parking in Woodburn because of the surrounding factors as described below and access to other alternative means of transportation.</p> <p>With a Walmart only 0.6 miles away and the I-5 interchange area only 1 mile away, residents without vehicles could walk to stores. Along with the Walmart, the I-5 interchange area includes the Woodburn Outlet Mall, several restaurants, a Starbucks and two different banks. A church and an elementary school are one mile away and the public library and downtown Woodburn are both two miles away. With all these different amenities nearby, this would be a strong consideration for tenants to walk or bicycle to places not requiring a vehicle.</p> <p>Public transportation is also readily available within walking distance of the property. The Woodburn Transit System (WTS) bus route stops at the Walmart and West Hayes Street. Another mode of</p>

		<p>transportation is the Salem-Keizer Cherriots 10x which runs along Portland Road NE to Salem with a stop at the Woodburn Transit Center, less than two miles away. This will reduce the need for a car as many people will commute to these neighboring cities for work.</p> <p>The property management will require parking permits in order to park onsite. Each vehicle that doesn't have a permit will be towed eliminating non-resident parking. The maximum allowed parking for 2 and 3-bedroom units will be 2 cars per unit. The management will also enforce only 1 car per unit for each 1-bedroom unit. By only allowing 1 car for each 1-bedroom unit that would allow exactly 2.03 cars per unit for each of the other 2 and 3-bedroom units.</p> <p>Additionally, the development team accounts for an average 5% vacancy in the rental property, which could leave anywhere from 30-60 parking spots available.</p> <p>To further support this variance, electric vehicle parking and bicycle parking is conditioned proposed well in excess of code requirements (see Section 3.05.03(A) and 3.05.03(E) above) and, if needed, the property management team would be willing to contact Zip Car and allow a parking space or two allocated to Zip cars for tenant use.</p>
Variance #3		<p>Section 3.05.03(C) – Compact Parking Percentage</p> <p><u>Requires:</u> A maximum of 20 percent of the required vehicle parking spaces may be satisfied by compact vehicle parking spaces.</p> <p><u>Proposed:</u> 25 60 percent</p> <p><u>Criteria #1:</u> A 20% compact parking ratio precludes meeting minimum off-street parking ratios to achieve housing density and affordability goals desired for the zone.</p> <p><u>Criteria #2:</u> Adjacent properties will not be affected by the proposed compact parking ratios.</p>
Variance #4		<p>Table 3.05(C) – Drive Aisle Width</p> <p><u>Requires:</u> The required width for a 90° 2-way drive aisle is 24'.</p> <p><u>Proposed:</u> Drive aisle widths are proposed as follows:</p> <p style="padding-left: 40px;"><u>One-way Travel</u></p> <p style="padding-left: 80px;">Standard or ADA compliant stalls: 18'</p> <p style="padding-left: 80px;">Compact stalls: 16'</p> <p style="padding-left: 40px;"><u>Two-way Travel</u></p> <p style="padding-left: 80px;">Typical All stalls: 24' minimum (26' as required for fire access) 20'</p> <p style="padding-left: 80px;">Parking lot stalls (where indicated): 20'</p>

		<p><u>Criteria #1:</u> 24' drive aisles preclude meeting minimum off-street parking ratios and housing density and affordability goals desired for the zone.</p> <p><u>Criteria #2:</u> Adjacent properties will not be affected by the proposed drive aisle width. Minimum required drive aisle widths for aerial fire access will be maintained.</p>
Variance #5		<p>Section 3.06.02(l) – Concrete Curb Height</p> <p><u>Requires:</u> A 6" high concrete curb shall be provided between landscaped areas and parking and circulation areas.</p> <p><u>Proposed:</u> 4" high concrete curbs throughout.</p> <p><u>Criteria #1:</u> Per Table 3.05C, a parking space may occupy up to two feet of a landscaped area or walkway. A 6" curb does not allow sufficient clearance for compact vehicles to overhang these areas.</p> <p><u>Criteria #2:</u> Adjacent properties will not be affected by the proposed curb height.</p>
Variance #6		<p>Section 3.06.05 – Screening</p> <p><u>Requires:</u> Architectural walls six to seven feet in height are required between CG and RS zones.</p> <p><u>Proposed:</u> Landscaping as screening provided in compliance with City of Portland Title 33.248.020C "L3, high screen" standards (rev. 7/24/2017).</p> <p><u>Criteria #1:</u> The architectural wall standard would incur higher construction costs on needed housing.</p> <p><u>Criteria #2:</u> The proposed landscaping will provide similar screening for the neighbors at less cost than an architectural wall.</p>

Parking rates comparison table

City	Studio	One-bed	Two-bed	Three+ bed	Average Ratio	Source / Notes
Woodburn	2	2	2	2	2	WDO 3.05.03A
1. Aurora	1	1	2	2	1.5	MC 16.42.030
2. Canby	1	1	2	2	1.5	MC 16.10.050
3. Hubbard	2	2	2	2	2	DC 2.203.05
4. Keizer	1	1	1.5	1.5	1.25	DC 2.303.06
5. Lake Oswego	1	1.25	1.5	1.5	1.31	MC 50.06.002
6. Mt. Angel	1.5	1.5	1.5	1.5	1.5	DC 8.6
7. Newberg	1	1	1.5	2	1.38	MC 15.440.030
8. Oregon City	1	1.25	1.5	1.75	1.38	MC 17.52.020
9. Salem	1.5	1.5	1.5	1.5	1.5	DC X 806.015
10. Silverton	1	1	1.5	2.25	1.44	MC 18 3.3.300A
11. Tualatin	1	1.25	1.5	1.75	1.38	DC 73C.100(1)
12. Wilsonville	1	1.25	1.5	1.75	1.38	DO 4.155
Average (13)	1.17	1.25	1.63	1.79	n/a	
Median (13)	1	1.25	1.5	1.75	n/a	Median is middle value
Mode (13)	1	1	1.5	1.5 & 2	n/a	Mode is most frequent value
B. Institute of Transportation Engineers (ITE)	1.25	1.5	2	2	1.69	Trip and parking generation manuals

Woodburn requires more multi-family parking than the vast majority of cities.

Memorandum

To: Woodburn City Council
Copy: Chris Kerr, Community Development Director
From: Jessica Hajar
Date: August 3, 2020
Subject: Allison Way Drive Aisle Width



This memorandum is written to describe the reduced drive aisle width within the Allison Way Apartment complex in Woodburn, Oregon.

For two-way drive aisles, the City of Woodburn Development Ordinance requires a width of 24 feet. The proposed plan provides 20 feet in some areas of the site. It is noted that all provided drive aisle widths support the requirements in the Oregon Fire Code. The following site plan shows the proposed drive aisles, with those variant from the standard shown in orange. These areas are not a part of the main drive aisle, which provides continuous access throughout the site. Through vehicles along the main drive aisle do not need to enter these areas as they do not provide access to the driveways of the complex. Therefore, speeds in the orange aisles are projected to be particularly low as vehicles will be preparing to end or begin their trip.



Figure 1: Site Plan

AutoTurn Analysis

A turning movement analysis was conducted using AutoTurn software. The analysis was run for two design vehicles: the "P" passenger vehicle and a 16-foot average design vehicle. The "P" passenger vehicle was selected from *A Policy on Geometric Design of Highways and Streets*¹ and represents the longest vehicle which the proposed parking stall can support. A design vehicle measuring 16 feet in length was also used for analysis. This length is typical of full-sized passenger vehicles and SUVs such as a Toyota Forerunner, Jeep Cherokee, and Kia Sorrento. The following figures show three scenarios using each design vehicle within the drive aisle:

1. A vehicle entering a parking space
2. A vehicle exiting a parking space
3. Two vehicles driving opposite directions

Vehicles occupying adjacent parking stalls were added to simulate a parking scenario at full capacity. As shown in Figure 2, the 16-foot average design vehicle is able to enter and exit the parking stall without needing to reverse or make a multiple point turn. As a worst-case analysis, the "P" design vehicle shown in Figure 3 is also able to maneuver the proposed width of the drive aisles by making a multiple point turn.

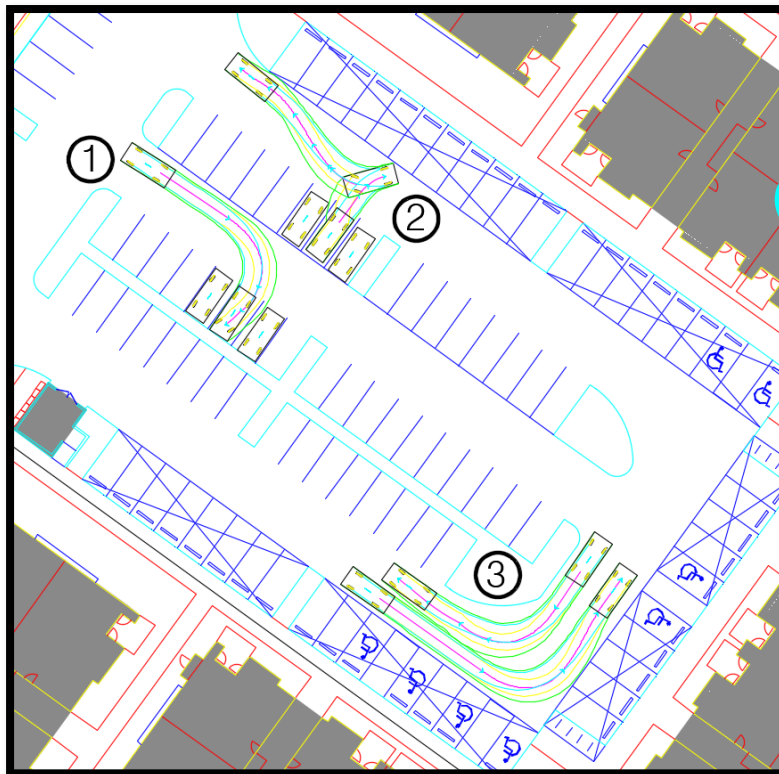


Figure 2: AutoTurn Analysis – 16 ft vehicle

¹ American Association of State Highway and Transportation Officials (AASHTO), *A Policy on Geometric Design of Highways and Streets*, 2018

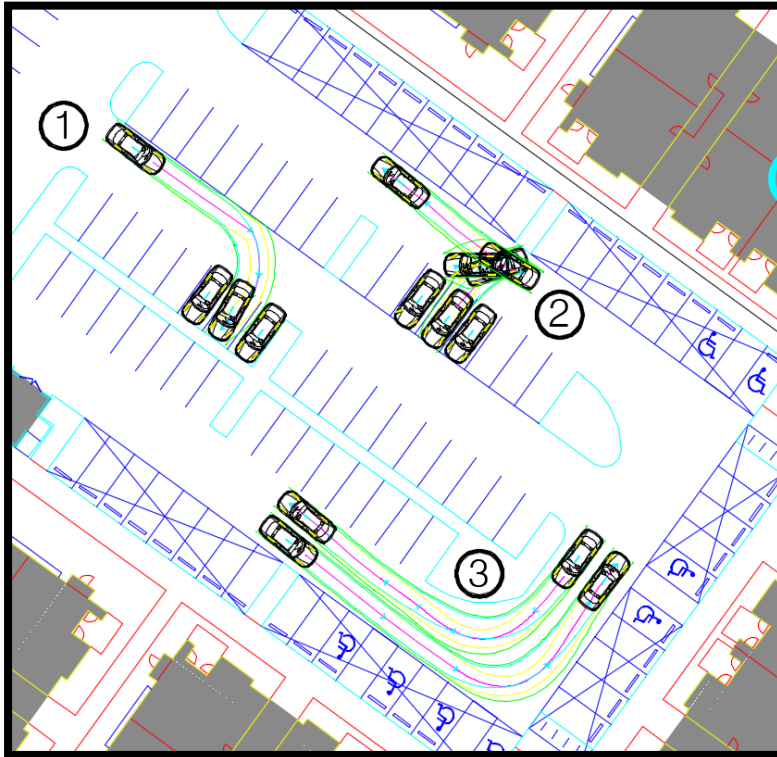
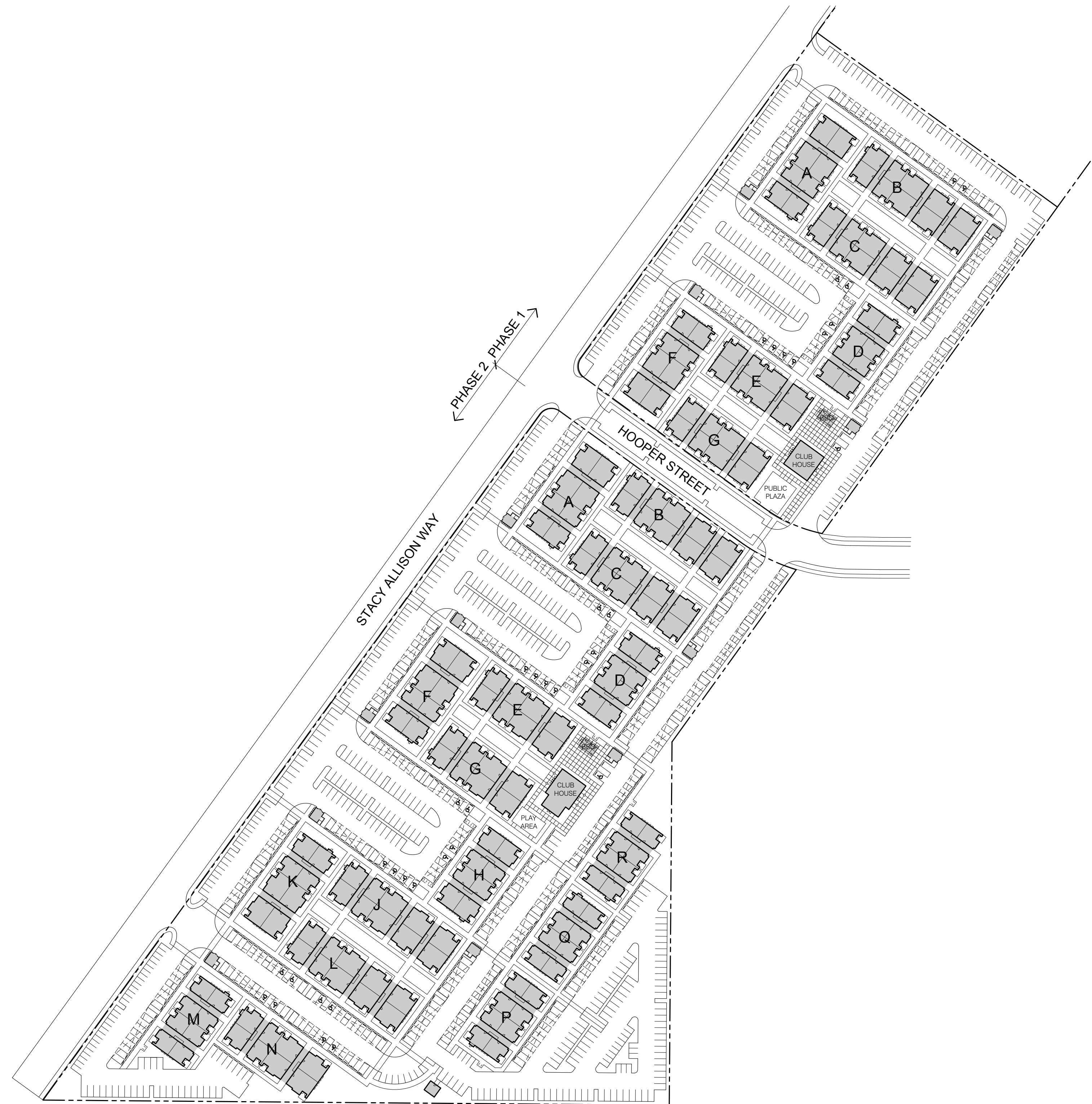


Figure 3: AutoTurn Analysis - "P" design vehicle

As shown in the provided analysis, the proposed 20-foot driveway aisle is adequate to ensure vehicles can access parking stalls while maintaining low speeds.



UNIT SUMMARY	
1-BEDROOM:	164 (28%)
2-BEDROOM:	376 (64%)
3-BEDROOM:	46 (8%)
TOTAL:	586 (30.8 UNITS/ ACRE)

VEHICLE PARKING - ON SITE	
STANDARD:	862 (77.2%)
COMPACT:	255 (22.8%)
TOTAL:	1,117 (1.91 SPACES/ UNIT)

COVERED:	564 (50.5%)
UNCOVERED:	553 (49.5%)
TOTAL:	1,117

ACCESSIBLE: 36

VEHICLE PARKING - OFF SITE	
STREET:	26

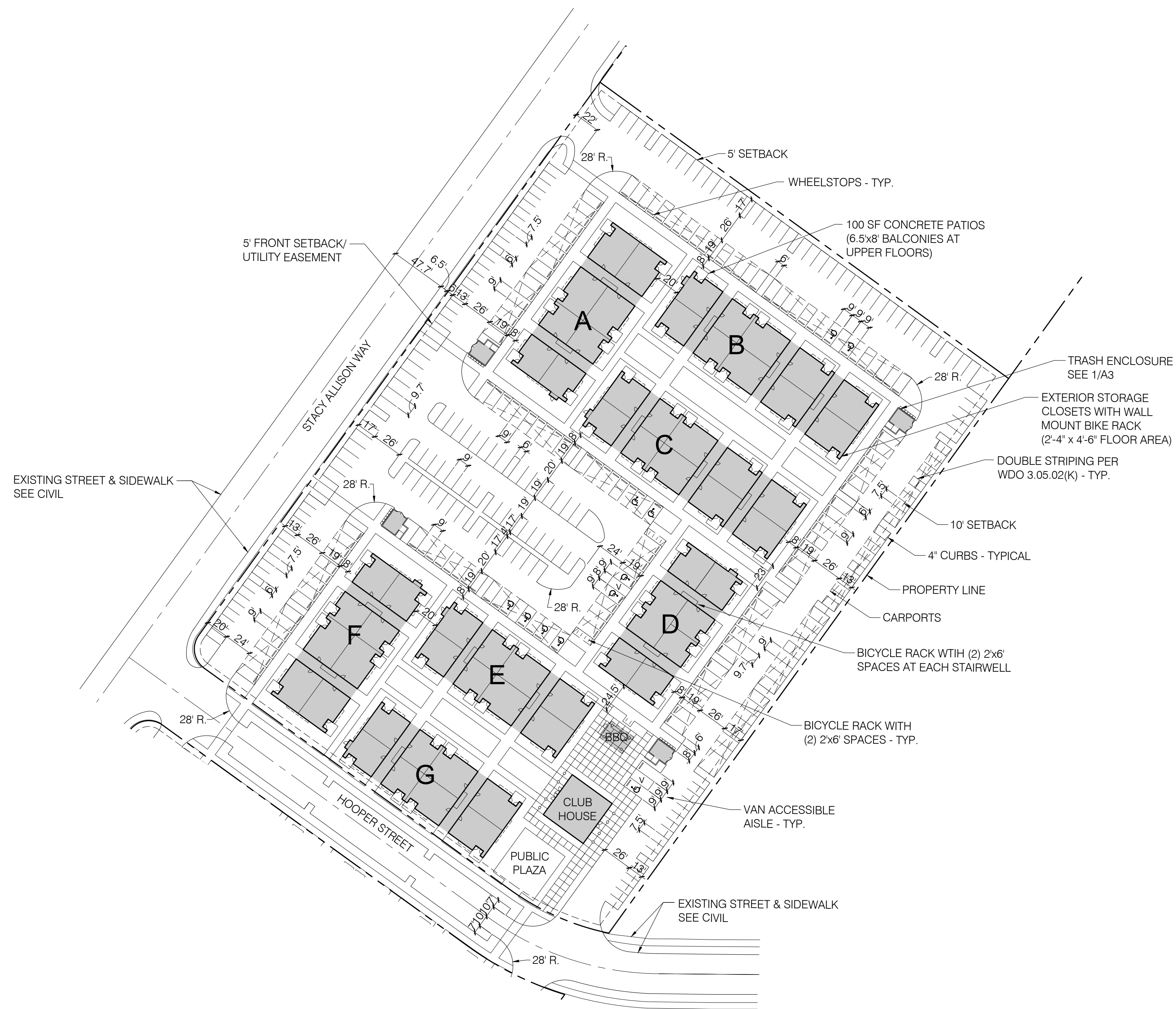
VEHICLE PARKING - TOTAL	
STANDARD:	862 (75.4%)
COMPACT:	255 (22.3%)
STREET:	26 (2.3%)
TOTAL:	1,143 (1.95 SPACES/ UNIT)

BICYCLE PARKING	
UNITS:	586
COVERED:	152
UNCOVERED:	20
TOTAL:	758

NOTE:
5% OF PARKING SPACES TO BE PROVIDED
WITH A CONDUIT SYSTEM FOR THE FUTURE
INSTALLATION OF ELECTRIC VEHICLE
CHARGING STATIONS PER OAR 918-020-0380.
PROVIDE 26 TOTAL SPACES WITH LEVEL 2
CHARGING STATIONS, STRIPING & SIGNAGE.

I SITE PLAN (PHASE I & 2)

Attachment 4



UNIT SUMMARY	
1-BEDROOM:	30 (16.8%)
2-BEDROOM:	132 (73.7%)
3-BEDROOM:	17 (9.5%)
TOTAL:	179 (30.2 UNITS/ ACRE)

VEHICLE PARKING - ON SITE	
STANDARD:	267 (77.2%)
COMPACT:	79 (22.8%)
TOTAL:	346 (1.93 SPACES/ UNIT)

COVERED:	178 (51.4%)
UNCOVERED:	179 (48.6%)
TOTAL:	346

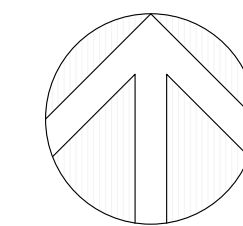
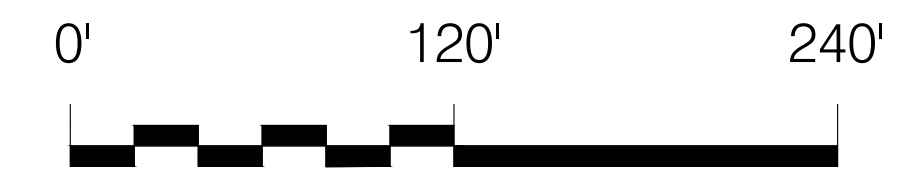
ACCESSIBLE: 11

VEHICLE PARKING - OFF SITE	
STREET:	13

VEHICLE PARKING - TOTAL	
STANDARD:	267 (74.4%)
COMPACT:	79 (22.0%)
STREET:	13 (3.6%)
TOTAL:	359 (2.01 SPACES/ UNIT)

BICYCLE PARKING	
UNITS:	179
COVERED:	48
UNCOVERED:	4
TOTAL:	231

NOTE:
5% OF PARKING SPACES TO BE PROVIDED
WITH A CONDUIT SYSTEM FOR THE FUTURE
INSTALLATION OF ELECTRIC VEHICLE
CHARGING STATIONS PER OAR 918-020-0380.
PROVIDE 8 SPACES WITH LEVEL 2
CHARGING STATIONS, STRIPING & SIGNAGE.



I SITE PLAN - PHASE I



UNIT SUMMARY

1-BEDROOM:	134 (32.9%)
2-BEDROOM:	244 (60.0%)
3-BEDROOM:	29 (7.1%)
TOTAL:	407 (31.1 UNITS/ ACRE)

VEHICLE PARKING - ON SITE

STANDARD:	595 (77.2%)
COMPACT:	176 (22.8%)
TOTAL:	771 (1.89 SPACES/ UNIT)

COVERED: 386 (50.1%)
UNCOVERED: 385 (49.9%)
TOTAL: 771

ACCESSIBLE: 25

VEHICLE PARKING - OFF SITE

STREET:	13
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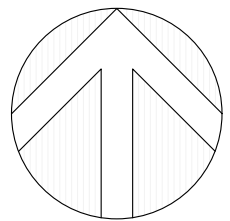
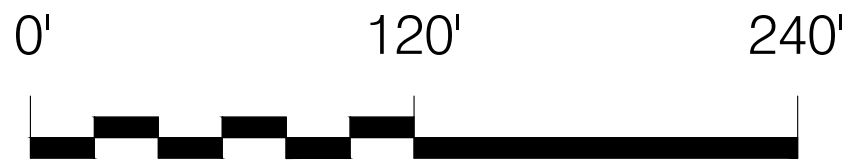
VEHICLE PARKING - TOTAL

STANDARD:	595 (75.9%)
COMPACT:	176 (22.4%)
STREET:	13 (1.7%)
TOTAL:	784 (1.93 SPACES/ UNIT)

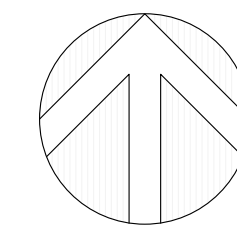
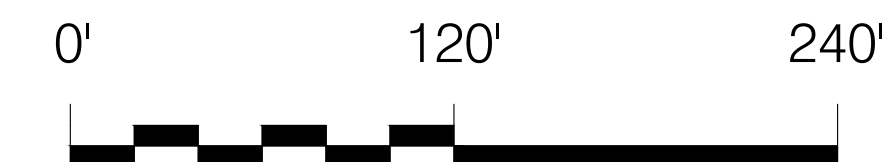
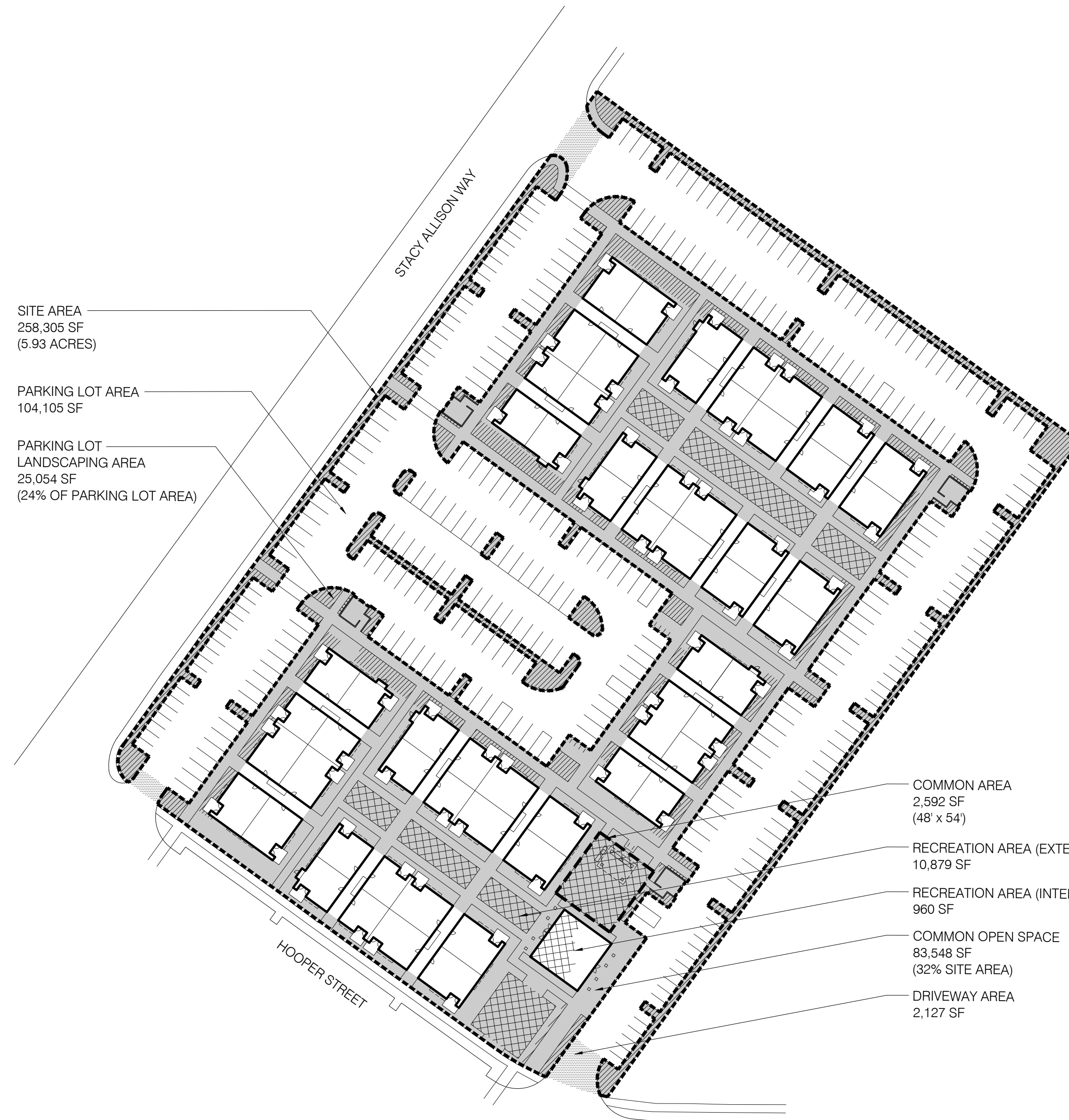
BICYCLE PARKING

UNITS:	407
COVERED:	104
UNCOVERED:	16
TOTAL:	527

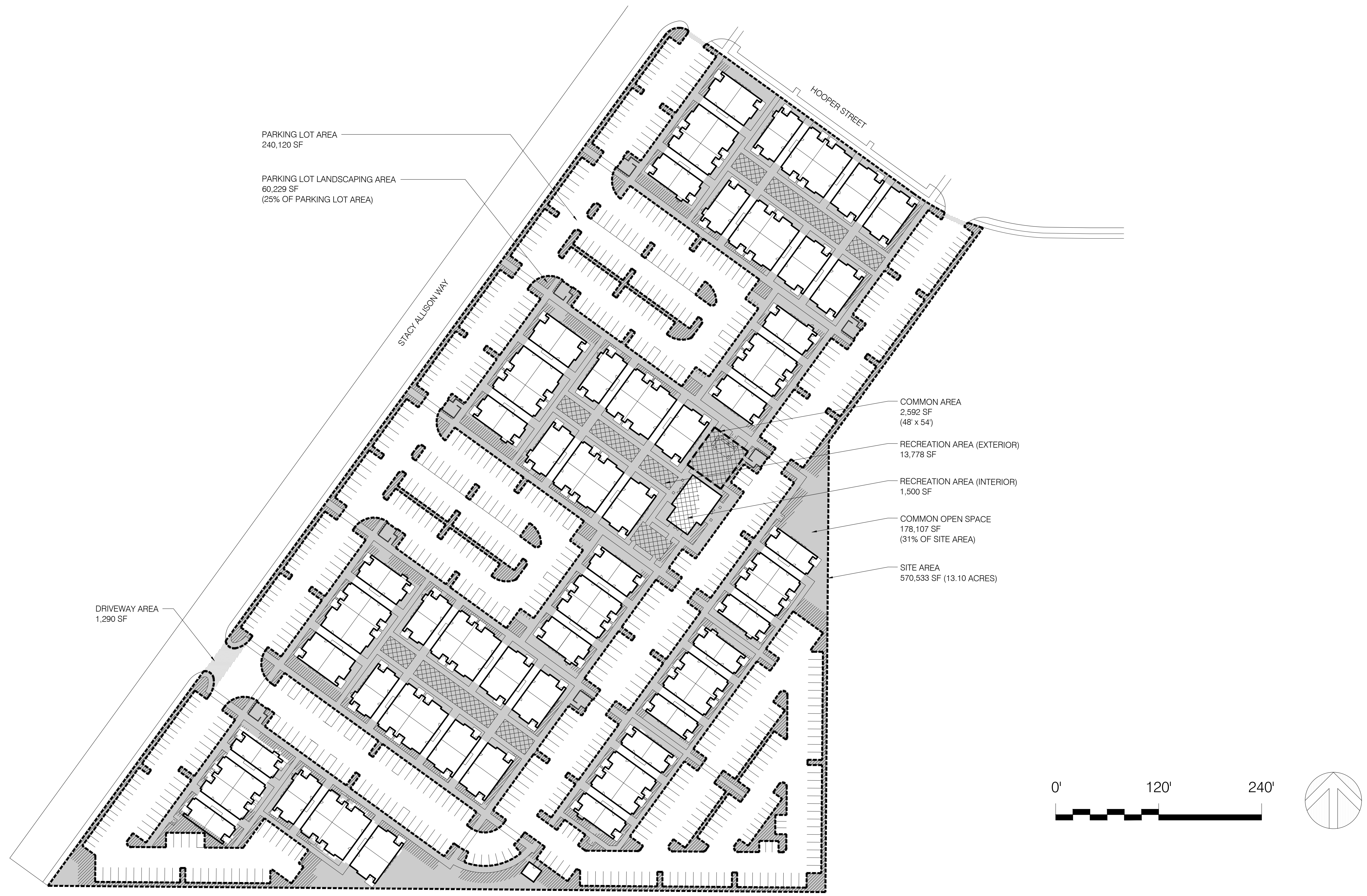
NOTE:
5% OF PARKING SPACES TO BE PROVIDED
WITH A CONDUIT SYSTEM FOR THE FUTURE
INSTALLATION OF ELECTRIC VEHICLE
CHARGING STATIONS PER OAR 918-020-0380.
PROVIDE 18 SPACES WITH LEVEL 2
CHARGING STATIONS, STRIPING & SIGNAGE



I SITE PLAN - PHASE 2



I SITE PLAN - PHASE I



I SITE PLAN - PHASE 2



I SITE PLAN (PHASE I & 2)

September 14, 2020

TO: Honorable Mayor and Council through City Administrator

FROM: Anthony Turley, Finance Director

SUBJECT: **FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Covid Relief Funds (CRF) and Business Oregon Small Business Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes.**

RECOMMENDATION:

Hold a public hearing and adopt the resolution authorizing \$750,000 additional grant revenue and appropriation authority to Operating Expenses in the General Fund.

BACKGROUND:

Every year, after Council budget adoption, circumstances arise that were either unforeseen, unquantifiable, or discovered as errors. Oregon Budget Law, ORS 294.471(1) provides for changes to adopted budgets through a transfer resolution or supplemental budget process that notices the proposed changes. Transfers in excess of 15 percent of any fund's total expenditures, or supplemental budget changes in excess of 10 percent of any fund's total expenditures, require a public hearing to accept public testimony on the item under consideration.

Like the adopted budget, supplemental budget requests must be balanced; in other words, net revenue and net expense for the request must be equal. This can be accomplished by budgeting additional revenue or by reducing another expenditure category (such as contingencies).

DISCUSSION:

The City of Woodburn has received a CRF grant through the State of Oregon for \$690,000. This additional revenue was not anticipated when the budget was adopted. This grant is intended to offset the increased and unanticipated cost impact of the COVID-19 pandemic.

In addition Business Oregon has awarded a grant to the City matching the \$60,000 Small Business relief grant program the City implemented last fiscal

year. The City intends to utilize this funded to implement an additional small business grant program in the next 30 days.

FINANCIAL IMPACT:

If the resolution is approved, the following changes will be made:

SUMMARY OF PROPOSED BUDGET CHANGES							
AMOUNTS SHOWN ARE REVISED TOTALS IN THOSE FUNDS BEING MODIFIED							
General - 001							
Resource	Original	Change	Revised	Requirement	Original	Change	Revised
1 Revenues	15,254,420	750,000	16,004,420	Operating Expenses	15,254,420	750,000	16,004,420
Revised Total Fund Resources			16,004,420	Revised Total Fund Requirements			16,004,420
Comments: Federal Grant allocated to COVID-19 related expenses & Business Oregon Grant Funds.							

September 14, 2020

TO: Honorable Mayor and City Council

FROM: Jim Row, Assistant City Administrator
McKenzie Granum, Assistant City Attorney

SUBJECT: **Utility Service Ordinance & Resolution setting ROW Utility License and Usage Fee Rates**

RECOMMENDATION:

As part of the City's implementation of a new licensing program to regulate utility services providers that access, use, and occupy the City's rights-of-way ("ROW"):

1. Enact the Utility Service Ordinance; and
2. Adopt a Resolution setting ROW utility license and usage fee rates in the City.

BACKGROUND:

Earlier this year, staff initiated a review of the City's process for regulating utility services providers' use of the City's ROW. At the July 13th City Council Meeting, Consultant Reba Crocker of ROW Consultants LLC, introduced what is to be a new utility licensing program in the City. At that a meeting a general introduction to the topic was presented and an initial draft ordinance and associated fee resolution was presented for the Council's review. Following that meeting, the proposed draft was sent to numerous providers of telecommunications, gas, and electric services in Oregon.

The City has received written feedback regarding its ordinance proposal from four companies (AT&T, Verizon, Fatbeam, and PGE). The providers' feedback and written comments are attached and included with this staff report.

After receiving the provider feedback and completing further review of the draft ordinance and resolution with City staff, some edits and updates were incorporated into both documents being presented for council adoption.

DISCUSSION:

By adopting the Utility Service Ordinance and correlating fee schedule, the City will join roughly one dozen other municipalities in Oregon that have implemented a uniform ROW licensing system.

Given the complexity of developing and implementing the proposed ROW management program, staff has worked closely with ROW Consultants LLC, and its Principal Reba Crocker, to develop the program and work towards an implementation date of October 1, 2020.

Reba Crocker will again be available as part of the Council's discussion regarding adoption of the utility license program to assist in addressing technical questions, policy concerns, industry dealings, and general impacts that may result from adopting this new program.

If upon review of the proposed ordinance, resolution, or provider correspondence, any Councilor has an immediate question or concern they would like addressed, then please feel free to submit questions ahead of the council meeting to staff so that Ms. Crocker or City staff can be sure to cover the subject in full detail during the council meeting.

After the City adopts the new Utility Services Ordinance, utility service providers will be actively identified and subjected to the new licensing program. The six (6) providers that are currently operating under franchise agreements will not be subject to the new ROW management/licensing program until their existing agreements expire.

As provided previously, the pertinent provisions of the enclosed Utility Services Ordinance includes:

- Utilities operated by the City and other municipalities are exempted from the requirements of the ordinance;
- Providers are required to maintain a City of Woodburn Business Registration;
- Providers with existing franchises agreements are exempted until their agreements expire;
- Preserves the City's right to enter into franchise agreements with individual providers in situations where the public interest warrants;
- Wire line cable television providers will continue to operate under franchise agreements due to protections under FCC law;
- Each license with utility providers will be for a term of five (5) years;

- Licenses are transferrable upon the written consent of the City, provided the transfers are consistent with state and federal law;
- Providers seeking license renewals shall submit license applications at least thirty (30) days, but not more than ninety (90) days prior to expiration;
- Includes provisions under which the City may terminate licenses;
- Includes requirements that providers must comply with related to the location, construction, maintenance and removal of facilities in the ROW; and
- Provides for ROW license and usage fees to be established by resolution.

FINANCIAL IMPACT:

The development of a uniform utility service provider licensing program is anticipated to result in an increase in ROW usage fees, formally referred to as franchise fees. The amount of the increase is unknown at this time and will depend on the number of utility service providers the City is able to determine are utilizing the ROW.

Enclosures:

Utility Service Ordinance

Utility License & Usage Fee Resolution

August 3rd Letter from Fatbeam LLC

August 7th Ordinance Comments received from PGE

August 10th Letter from Wireless Policy Group LLC on behalf of Verizon Wireless

August 11th Letter from Wireless Policy Group LLC on behalf of New Cingular Wireless PCS, LLC ("AT&T")



August 11, 2020

McKenzie Granum, Assistant City Attorney
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

SENT VIA EMAIL: mckenzie.granum@ci.woodburn.or.us

Re: Small Wireless Facilities
Draft Utility Licensing and Right-of-Way Usage Fees

Dear Ms. Granum:

New Cingular Wireless PCS, LLC (“AT&T”) appreciates the opportunity to comment on the draft utility licensing and right-of-way usage fees proposed to apply to communications services and wireless facilities, which the City of Woodburn (“City”) plans to take to public hearing on September 14, 2020.

AT&T supports the City’s efforts to update its wireless codes and fees for greater consistency with federal law – most notably, the 2018 Federal Communications Commission (“FCC”) Order¹ – as well as advancements in technology.

With regard to the City’s proposed utility licensing and right-of-way (“ROW”) usage fees, AT&T has numerous concerns.

Specifically, AT&T objects to the proposed assessment of ROW “usage” fees based on revenue from its wireless communication facilities located on private property. At this time, AT&T has no wireless facilities located in the City’s ROW, and the AT&T wireless facilities currently serving Woodburn citizens do not “use” the ROW under the proposed utility services ordinance or under commonly-understood principles.

Also of concern, the draft fee resolution states that the 7% fee will apply to “Communications (other than Small Cell Wireless Facilities).” As a practical matter, it is simply not possible to separate revenue derived from service provided by small wireless

¹ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018)(“Order”).

facilities from other wireless service revenue. Among other issues, by their design, small wireless facilities typically add capacity to an area that is already covered; in other words, they are often installed to improve the *quality* of wireless service in an area, so the exception is practicably ineffective.

AT&T is Not Currently “Using” the City’s ROW

Because AT&T provides wireless service in the City through facilities located on private property, AT&T is not “using” the ROW for purposes of assessing a ROW usage fee.

AT&T does not “use” the ROW when it is merely a customer of other utilities. AT&T currently provides wireless “Communications Services,” as that term is defined in the draft utility services ordinance, within the City, but not yet via wireless facilities located in the ROW.

We understand the City’s ROW consultant to believe that a wireless service provider “uses” the ROW when it is a backhaul customer via fiber owned and operated by another service provider. To confirm, AT&T has not installed any fiber facilities within the City’s ROW to connect to its wireless facilities located on private property. Further, even if AT&T were to install small wireless facilities in the City’s ROW, AT&T’s practice has been to contract with a licensed fiber provider to bring fiber service to its wireless facilities. In other words, for its wireless facilities AT&T is the fiber provider’s customer, not a provider of communications service via fiber. The fiber provider will at all times remain the owner and operator of the fiber lines, and as such will be responsible for obtaining its own licenses, permits and approvals from the City for installation and operation of fiber within the City’s ROW and paying any relevant fees for usage of the City’s ROW. See Section 5 of draft fee resolution. Most of AT&T’s wireless facilities consume power provided through facilities laid in the ROW – would the City take the position that AT&T is “using” the ROW to provide wireless service because it is an electric customer?

AT&T does not “use” the ROW when it merely emits radio frequency (“RF”) waves that may cross a ROW. We understand the City’s ROW consultant has also advanced the opinion that a wireless provider “uses” the ROW any time its RF waves cross a ROW. We do not believe that the utility services ordinance supports such a position. Importantly, the purpose of the ordinance is to “conserve the limited *physical capacity*” of the ROW and reimburse the City for the “costs of granting and regulating access” from those entities “causing such costs.” Section 2. AT&T’s emission of RF waves over a

ROW does not impact the physical capacity of the ROW or add costs to the City's ROW management.

Finally, the City's consultant's view of the applicability of a ROW usage fee based on a percentage of revenue is contrary to AT&T's understanding of the League of Oregon Cities model utility ordinance. You will see in the Usage Fee section of the City's draft ordinance, Section 13(A)-(B), that the site-specific usage fee for a utility facility mounted on an above-ground structure within the ROW, when the structure is owned by another entity, is said to be an *exception* to otherwise applicable ROW fees based on a percentage of revenue. Section 13(A) ("*Except as set forth in subsection B of this section*").

The 2018 FCC Order

In 2018, the FCC addressed the limits imposed by Sections 253 and 332 of the Telecommunications Act² on a local jurisdiction's regulation of small wireless facility deployment.³ The FCC concluded that ROW access fees and other fees violate Sections 253 or 332(c)(7) unless three conditions are met: (1) the fees are a reasonable approximation of the local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.⁴

Specifically, Sections 253 and 332 bar local governments from imposing requirements that would prohibit or have the effect of prohibiting the ability of an entity to provide telecommunications service, although local governments are allowed to charge telecommunications providers "fair and reasonable compensation" for use of the ROW.⁵

Further, the FCC concluded "that an appropriate yardstick for 'fair and reasonable compensation,' and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of... maintaining the ROW... or processing an application or permit."⁶ The FCC continued, "fees are only permitted to the extent they represent a reasonable approximation of the local government's objectively reasonable costs..."⁷ otherwise, the fees violate Sections 253 and 332. ROW fees must be "*related to and*

² 47 U.S.C. §§ 253, 337.

³ *Id.*

⁴ FCC Order, ¶ 50.

⁵ 47 U.S.C. §253(c).

⁶ FCC Order, ¶ 72 (citations omitted).

⁷ *Id.*, ¶ 32, footnote 71.

caused by” the location of a small wireless facility and reflect the facility’s “*degree of actual use* of the public rights-of-way.”⁸ The FCC *Order* set a presumptively reasonable recurring fee for small wireless facilities located in the right-of-way of \$270 per year, per facility.⁹

Moreover, the courts have specifically recognized that “gross revenue fees generally are not based on the costs associated with an entity’s use of the ROW, and where that is the case, are preempted under Section 253(a).”¹⁰

The extension of the proposed 7% communications fee to small wireless facilities, which would be the practical effect of the City’s proposal, is unlawful.

Finally, while the 2018 *Order* did not set a presumptively reasonable ROW fee for macrocell facilities, such fees must also meet the requirements of Sections 253 and 332.

We appreciate the City’s consideration of AT&T’s comments and for all of the efforts by the City’s leaders and staff to establish workable policies for the wireless industry, including AT&T, and the people living and working in the Woodburn community.

Thank you for your consideration of these comments.

Sincerely,



Meridee Pabst
meridee.pabst@wirelesspolicy.com

cc: Reba Crocker, ROW Consultants LLC

⁸ Id. at footnote 131 (emphasis added).

⁹ FCC *Order*, ¶ 79.

¹⁰ Id., ¶ 70 (citations omitted).

August 7th Ordinance Comments received from PGE

Utility Services Ordinance

Section 1. Title.

The ordinance will be known and may be referenced as the Utility Service Ordinance.

Section 2. Purpose and Intent.

The purpose and intent of this Ordinance is to:

A. Permit and manage reasonable access to and use of the City's rights-of-way for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Assure that the City's current and ongoing costs of granting and regulating access to, the use of the rights-of-way and utility services provisioned in the City, are fully compensated by the persons seeking such access and causing such costs;

C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning, controlling, using or operating facilities therein or generate revenue for utility services;

D. Assure that all utility companies, persons and other entities owning, operating facilities, using facilities, or providing services within the City comply with the ordinances, rules and all regulations of the City heretofore or hereafter amended or adopted;

1. For the purposes of this Ordinance, all utility services owned or operated by the City are excluded.
2. For the purposes of this Ordinance, all utility services owned or operated by other municipalities are excluded.

E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City by;

1. Allow the City to enter into other or additional agreements with Utility Providers and Operators, if the public's interest is served, and to amend the requirement of this Ordinance and the City regulations, as new technology is developed;
2. Allow the City to be resilient and adaptive to changes in technology; and

G. Comply with applicable provisions of state and federal law.

Section 3. Jurisdiction and Management of the Public Rights-of-way.

A. The City has jurisdiction and exercises regulatory management over, all rights-of-way within the City and provision of services, under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the right-of-way and does not obligate the City to maintain or repair any part of the right-of-way.

D. The provisions of this Ordinance are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, will be interpreted to be consistent with such laws, rules and regulations.

Section 4. Regulatory Fees and Compensation Not a Tax.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the rights-of-way and the provision of services provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and City charges, including but not limited to: any permit fee, or any other generally applicable fees, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider, franchisee or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivations will have the meaning given herein. When not inconsistent with the context, words not defined herein will be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, and the Telecommunications Act. If not defined in those statutes, the words will be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable Act” means the Cable Communications Policy Act of 1987, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Calendar year” means January 1 to December 31, unless otherwise noted.

“City” means the city of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City council” means the elected governing body of the city of Woodburn, Oregon.

“City facilities” means City or publicly owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

“City standards” means the all ordinances, codes, regulations and rules of the City of Woodburn, in effect at the time of any work.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way or private communication system services that utilize the public rights-of-way only for the purposes of providing other utility services that are covered by this ordinance or franchise agreement; (4) public communications systems; (5) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (6) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

Commented [CL1]: PGE’s electric system requires the transmission of information since our metering system is wireless and many of our substations are remotely operated. We are not generating any gross revenue from these private communication systems/services though.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Control” or “Use of Facilities” means actual working control over utility facilities in whatever manner exercised, whether or not the facility is owned. For example, but not limitation, Control means and includes leased capacity, transport, or any other use.

“Days” mean calendar days unless otherwise specified.

“Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation (including revenue derived from a leases or other agreements allowing use of facilities to other utility operators or providers), or use of utility facilities in the City, operation of a Communications Services or the provision of utility service(s) in the City, subject to all applicable limitations in federal or state law. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, any amounts collected from utility customers that are subsequently passed through to one or more third party entities pursuant to law or a tariff, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate customer. Gross Revenue also does not include revenue from joint pole use. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by a utility from other franchisees, permittees, or licensees of the City for the right to attach wires or cable to utility’s poles or places them in utility’s conduits. For purposes of this Ordinance, revenue from joint pole use does not include rental or other similar revenue collected by utility from other franchisees, permittees, or licensees of the City for the right to pole attachments for Small Cell Wireless Facilities.

Commented [CL2]: As we discussed on our call, we find that adding more specificity around the definition of Gross Revenue significantly reduces to the cost both parties of administration and auditing the fees owed/paid to the City. This proposed language is borrowed from the recently passed Franchise in Tualatin.

“License” or “Utility License” means the authorization granted by the City to a utility operator or utility provider pursuant to this Ordinance.

“Licensee” or “Utility Licensee” means any person that has a valid Utility license issued by the City.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale,

including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

“Right-of-way” , “Rights-of-Way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Small Cell Wireless Facility” means Facilities owned or operated for the provision of communications that are shorter ranged, wireless systems affixed to a structure with generally smaller components than traditional Macro Wireless Facilities and are deployed where suitable in flexible configurations to provide capacity and coverage. Small Cell Wireless Facilities means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

“State” means the state of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds, or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “operator” means any person who owns, places, controls, operates or maintains a utility facility within the City.

“Utility provider” or “Provider” means any person who provides utility service or communication services to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, or cable services, to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 6. Business Registration

Business Registration Required. Every person that desires to use, operate or control utility facilities, or provide utility services to customers within the City will register with the City prior to use, operation, control of utility facilities, or providing any utility services to any customer in the City, in compliance with Ordinance No. 2399. Every person using, operating, controlling, or providing utility services to customers within the City as of the effective date of this Ordinance will obtain a Business Registration within thirty (30) days of the effective date of this Ordinance. Every person subject to this Ordinance will renew and maintain a Business Registration as required in Woodburn’s Ordinances that are heretofore or hereafter amended, at all times that the person, uses, operates, controls, provides or operates a utility services, to customers within the City.

Section 7. Utility License.

A. License Required.

Except those utility operators and utility providers with a valid franchise or other valid agreement from the City, every person will obtain a Utility License from the City prior to conducting any work in or use of the ROW, or providing utility services or communication services to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

1. Every person that owns, or controls, provides utility services, or uses utility facilities in the rights-of-way as of the effective date of this Ordinance will apply for a Utility License from the City within thirty (30) days of the later of: (1) the effective date of this Ordinance, or (2) the expiration of a valid agreement granted by the City, unless a new agreement is granted by the City (3) for a person that is not a utility operator, providing utility services within the City.
2. The provisions of this section do not apply to any person subject to and in compliance with the cable television franchise requirement, except that subsection K will apply to the extent such person provides multiple services, subject to applicable law.

B. Utility License Application. The license application will be on a form provided by the City, and will be accompanied by any additional documents required by the application or the City, in the City's sole discretion, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provisioned, and other information necessary to determine the applicant's ability to comply with the terms of this Ordinance.

C. Utility License Application & Renewal Fee. The application and renewal application will be accompanied by a nonrefundable fee or deposit set by resolution of the City Council.

D. Determination by City. The City will issue, within a reasonable period of time, a written determination granting or denying the Utility License in whole or in part. If the Utility License is denied, the written determination will include the reasons for denial. The Utility License will be evaluated based upon the provisions of this Ordinance, the information contained on the Utility License application, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Changes to information contained on the Utility License application. Within thirty (30) days of a change to the information contained in the license application, the Licensee will notify the City in writing of such change(s).

F. Franchise Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and any ~~communications~~ provider – including cable providers, utility operator or utility provider, excluding Small Cell wireless providers, may enter into a written franchise or

other agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Ordinance, consistent with applicable state and federal law. The agreement may conflict with the terms of this Ordinance with the review and approval of City Council. The franchisee will be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with the express provisions of any such franchise or agreement. In the event of a conflict between the express provisions of a franchise or other agreement and this Ordinance, the franchise or other agreement will control.

- ~~1. The provider requesting a franchise agreement will deposit a non-refundable fee, as set by resolution of the City Council before negotiations occur.~~

Commented [CL3]: This is a highly unusual requirement, something that no other City in our service territory has ever required. We view franchise agreements no different than any other commercial contact that we negotiate and enter into, whereby each party bears its own costs (usually just internal costs) associated with such negotiations. Our experience has been that the costs associated with negotiating our franchise agreements with Woodburn historically have been negligible and result in only minimal internal costs (for both parties). Perhaps a compromise would be to say "Unless otherwise agreed to in writing by the City, the provider requesting a franchise agreement will deposit..."

G. Rights Granted.

1. The Utility License granted hereunder will authorize and permit the licensee, subject to the provisions of the City regulations and ordinance and other applicable provisions of the City, state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate, control or use utility facilities in the rights-of-way for the term of the license for the provision of utility service(s) authorized in the license. In the event the licensee offers different service(s) than those authorized in the license, the licensee will inform the City of such changes no later than thirty (30) days after the change.
2. Any Utility License granted pursuant to this Ordinance will not convey equitable or legal title in the rights-of-way and may not be assigned or transferred except as permitted in subsection L of this section.

Neither the issuance of the Utility License nor any provisions contained therein will constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City, in existence at the time the license is issued or thereafter obtained.

H. Term. Subject to the termination provisions in subsection N of this section, the Utility License granted pursuant to this Ordinance will be effective as of the date it is issued by the City or the date services began, whichever comes first, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. Utility License Nonexclusive. No license granted pursuant to this section will confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license will be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

J. Reservation of City Rights. Nothing in the Utility License will be construed to prevent the City from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities will be removed or relocated as provided in subsections C, D and E of Section 9, in a manner acceptable to the City and consistent with City standards, industry standard engineering and safety codes in effect at the time the work is required.

K. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and Usage fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the Usage use fee, if any, owed to the City by another person using the utility operator's facilities.
2. A utility operator that provides or transmits more than one utility service to customers in the City may not be required to obtain a separate Utility License or franchise for each utility service, but is required to file separate reports, remittances and submit any Usage fees due for each service provided.

L. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the Utility Licensee will obtain the written consent of the City prior to the transfer or assignment of the license. The license will not be transferred or assigned unless;

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and/or provide the utility service authorized under the license; and
2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The Utility Licensee requesting the transfer or assignment will fully cooperate with the City and provide requested documentation, as the City deems necessary, in the City's sole discretion, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee will become responsible for fulfilling all obligations under the Utility License. A transfer or assignment of a license does not extend the term of the license.

M. Renewal. At least thirty (30) days, but no more than ninety (90) days prior to the expiration of a Utility License granted pursuant to this section, a licensee seeking renewal of its license will submit a license application to the City, including all information required in subsection B of this

section and applicable fees fee required in subsection C of this section. The City will review the application as required by subsection D of this section and grant or deny the license. If the City determines that the licensee is in violation of the terms of this Ordinance, or other City Ordinances, rules or regulations, at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

N. Termination.

1. Revocation or Termination of a Utility License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:
 - a. Violation of any of the provisions of this Ordinance;
 - b. Violation of any provision of the license;
 - c. Misrepresentation in a license application;
 - d. Failure to pay taxes, compensation, fees or costs due the City after final determination by the City, of the taxes, compensation, fees or costs;
 - e. Failure to restore the rights-of-way after construction as required by this Ordinance or other applicable state and local laws, ordinances, rules and regulations;
 - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors will be considered:
 - a. The egregiousness of the misconduct;
 - b. The harm that resulted;
 - c. Whether the violation was intentional;
 - d. The Licensee's history of compliance; and/or
 - e. The Licensee's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The City will give the Utility Licensee written notice of any apparent violations before terminating a Utility License. The notice will include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the Licensee to demonstrate that the Licensee has remained in compliance, that the Licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the Licensee is in the process of curing a violation or noncompliance, the Licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the Licensee does not respond or if the City determines that the Licensee's response is inadequate, the City may revoke and/or terminate the Utility License.

4. Termination by Utility Licensee. If a licensee ceases to be required to have a Utility License, as defined under this Ordinance, the licensee may terminate or surrender its license, with a thirty (30) day notice to the City. Licensee may reapply for a Utility License at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.
 - a. Within thirty (30) days of surrendering a Utility License, the licensee will file a final remittance form with the City stating, "final remittance" and will remit any funds due.
 - b. Upon surrendering a Utility License, the licensee will file a written statement that it has removed, or will commence and diligently pursue removal within 60 days, any and all facilities from the City and no longer provides Utility Services, as defined in this ordinance.

Commented [CL4]: It would be technically impossible to remove our entire electric infrastructure in the entire City within 60 days. We also have a regulatory mandate to provide electric power to the residents and businesses in the City. Perhaps there is a process by which the parties could agree to a different schedule in this very remote circumstance.

Section 8. Construction and Restoration.

A. Construction Codes. Utility facilities will be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the City Standards, in effect at the time of the work. When a utility operator, utility provider or licensee, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator will, at its own expense, promptly restore the rights-of-way as directed by the City consistent with applicable city codes, rules and regulations, in effect at the time of the work. A utility operator, utility provider, licensee or other person acting on its behalf will use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the rights of way or property.

B. Construction Permits.

1. Except in cases of emergency when obtaining a permit prior to commencing the work in the rights-of-way is impracticable, no person will perform any work on utility facilities within the rights-of-way without first obtaining all required permits. In cases of an emergency when obtaining a permit prior to commencing the work in the rights-of-way is impracticable, such person shall promptly obtain all requisite permits as soon as practicable. The City will not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, franchise agreement or other valid agreement (if applicable), required by this Ordinance, and all applicable fees have been paid. No permit is required for routine maintenance or repairs to customer service drops where such, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right of way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.

Commented [CL5]: There are emergency circumstances that require us to take immediate action prior to obtaining a permit to either prevent injury to people or property or to restore power (e.g., car accident that knocks over a pole, leaving a live wire laying across the street or an outage during an ice storm that leaves City offices closed).

Section 9. Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City:

1. All utility operators are required to make good faith effort to both cooperate with and coordinate their construction schedule with those of the City and other users.

2. Utility facilities will be installed underground in all areas of the City where there are no existing poles in the ROW, there is no space on existing poles in the ROW, or where the only poles in the ROW are used only for high voltage lines (as defined below). This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the utility operator had written authorization to place above-ground when such facilities were installed.

Commented [CL6]: Much of our authority to place these types of facilities above ground was granted through the past franchises. If the franchise expires, we would like assurances that those facilities are still in the proper location since they were authorized at the time of installation.

2. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within the ROW of the City, the utility operator with permission to occupy the same ROW will install all new facilities underground at no cost to the City, unless otherwise agreed to in writing by the City. This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW at the time such equipment is installed.

Commented [CL7]: Other cities have wanted the discretion to help subsidize the costs of undergrounding in order to keep the costs to residents lower.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities will not be located in area of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the rights-of-way will be consistent with City codes, ordinances, rules and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities.

1. A utility operator will, at no cost to the City, unless otherwise agreed to in writing by the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City for a City project.

Commented [CL8]: Other cities have wanted to reserve the flexibility to agree to pay for certain relocation costs, in particular for forced undergrounding situations.

a. If relocation is required by the City, the City will bear no responsibility or incur any costs, to provide or in any way secure alternate locations.

2. Nothing herein will be deemed to preclude the utility operator from ~~requesting-seeking~~ reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator will timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

3. The City may coordinate the schedule for relocation of utility facilities and based on such effort will provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date reasonably established by the City, the utility operator will pay all costs incurred by

the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

4. The City will cooperate with the utility operator in securing alternate locations. However, the City will bear no responsibility or costs for securing alternate locations. ~~The City will bear no responsibility to obtain, compensate, or otherwise assist the utility operator in relocation of its facilities to location not in the control of the City.~~

Commented [CL9]: "Otherwise assist" could be read to be in conflict with the cooperation obligation in the first sentence.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way will, at its own expense, remove the facility and restore the affected area.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility, or any portion of the facility, is outside the scope of authority granted by the City under the Utility License, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve (12) consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.
 - c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Ordinance.
 - d. The utility operator is in violation of a material provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation ~~(or in the event the cure cannot be completed within thirty (30) days, the utility operator shall have commenced to cure and be diligently pursuing completion of such cure)~~, unless the City extends such time period in writing.

Commented [CL10]: Certain scopes of work may take longer than 30 days to complete.

E. Removal by City.

1. The City retains the right and privilege to cut or move any utility, without notice, as the City determines, at its sole discretion to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The City will use best efforts to provide the utility operator with notice prior to cutting or moving

facilities. If prior notice is not possible, the City will provide such notice as soon as reasonably practicable after resolution of the emergency.

2. If the utility operator fails to remove any facility when required to do so under this Ordinance and after receiving notice from the City, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator will be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove will survive the termination of the license or franchise.
3. The City will not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to ~~subsections B, C or D of this~~ Section 9 ~~or undergrounding its facilities as required by subsection A of Section 9, or~~ resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by ~~those subsections~~ this Section 9, unless such damage arises directly from the City's or it's contractor's negligence or willful misconduct.

F. Engineering Record Drawings. The utility operator will provide the City with ~~two~~ a complete sets of record drawings in a form acceptable to the City showing the location of all its utility facilities after initial construction if such plan changed during construction. The utility operator will provide updated complete sets of as built plans upon request of the City, but not more than once per year.

Commented [CL11]: As more information, including drawings, move toward digital mediums, it seems redundant to require two copies and will likely bog down your systems to have duplicative digital copies.

G. Utility operator, Utility provider and Utility Licensee will provide, at no cost to the City, a comprehensive map showing the location of any facility in the City. Such map will be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or Geodatabase format. The Utility Operator, Utility Provider and Utility Licensee will provide such map yearly by February 1.

Section 10. Leased Capacity.

A utility operator may lease capacity on or in its facilities to others, provided that the utility operator requires, through contract or otherwise, and has verified with the City, that the proposed lessor has obtained proper authority from the City prior to leasing capacity or allowing use of its facilities. Upon request, at no cost to the City, the utility operator will provide a complete list with the name, business address and contact information of any lessee. ~~If requested by the City, the utility operator will also provide exact details of any attachment by lessee.~~ A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law.

Commented [CL12]: We require all of our pole attachees to make a legal representation to us in their contract with us that they have all required legal authority to operate. We also provide a list of all attachees on poles located in the City. We believe enforcement of this legal requirement should be the responsibility of the City.

Commented [CL13]: Just as PGE has an obligation under our franchise and under this ordinance to provide information about our facilities, we believe it is more appropriate for the City to seek this information from the owner/operator of each specific attachment (which they too are obligated under franchise or this ordinance to provide that information). Our information about attachments is often in flux and can be stale since the owner/operator is often the entity who is doing the work on that attachment itself rather than us.

Section 11. Maintenance.

A. Every utility operator will install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator will, at

its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 12. Vacation.

If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator will, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City will make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated (or if removal cannot be completed within thirty (30) days, utility operator fails to commence and diligently pursue completion of such removal), or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 13. Usage Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the City's rights-of-way and every person that uses or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities used to provision the utility services and every person that provides utility services within the City, will pay the usage fee for every utility service provided in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on above-ground structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW (other than equipment necessary to operate the mounted facilities that has been expressly approved by the City to be placed in the ROW), will pay the attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter and will be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Usage fee payments required by this section will be reduced by any franchise fees or privilege taxes, due to the City, but in no case will be less than zero dollars (\$0).

E. Unless otherwise agreed to in writing by the City, the Usage fee set forth in subsection A of this section will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment will be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and will be provided at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the utility provider, utility operator or licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

F. The calculation of the Usage fee required by this section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers, utility operators and licensee subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the Usage fees or any other fees required by this Ordinance

Section 14. ~~Penalties and Interest on Usage Fee~~

~~Penalties and interest~~ imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

1. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in Section 13 will pay ~~City a penalty listed below in addition to the amount due~~ interest on any past due amounts in the amount of nine percent (9%) per annum, or such maximum amount permitted by law:-
 - ~~a. First occurrence during any one calendar year; Ten percent (10%) of the amount owed, or Twenty five dollars (\$25.00), whichever is greater.~~
 - ~~b. Second occurrence during any one calendar year; Fifteen percent (15%) of the amount owed, or Fifty dollars (\$50.00), whichever is greater.~~
 - ~~c. Third occurrence during any one calendar year; Twenty percent (20%) of the amount owed, or Seventy five dollars (\$75.00), whichever is greater.~~
 - ~~d. Fourth occurrence during any one calendar year; Twenty five percent (25%) of the amount owed, or One hundred dollars (\$100.00), whichever is greater.~~
2. If the City determines that the nonpayment of any remittance due under this section is due to fraud or intent to wrongfully evade the provisions hereof, ~~an additional~~ penalty of twenty-five percent (25%) of the amount owed, or Five hundred dollars (\$500.00), whichever is greater, will be added thereto in addition to other penalties stated in ~~s~~Section 14.

Commented [CL14]: We believe these penalties are excessive and likely unenforceable under Oregon law, in particular for unintentional wrongdoing. We suggest limiting the interest payments to the maximum interest permitted by Oregon law and rely on the penalty provision in subpart 2 and in Section 19.

3. ~~In addition to the penalties imposed, any person who fails to remit any fee when due as provided in Section 13 will pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City.~~

Commented [CL15]: We suggest one interest rate calculation for past due amounts.

4.3. Every penalty imposed, and ~~such~~ interest as it accrues under the provision of this section, will be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under Section 14.

Section 15. Audits and Records Requests.

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every Utility Licensee, Utility Operator and Utility Provider will furnish the City, at no cost to the City, with information sufficient to demonstrate compliance with all the requirements of this Ordinance, any franchise agreements or other agreements, if any, including but not limited to payment of any applicable Business Registration fee, licensing fee, usage fee, attachment fee, franchise fee or privilege taxes.
2. Every Utility Operator, Utility Provider and Utility Licensee will make available for inspection by the City at reasonable times and intervals ~~all~~ maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities or use of facilities, within the rights-of-way. Access will be provided within the City unless prior arrangement for access elsewhere has been made and approved by the City.

Commented [CL16]: For the safety and security of our electric system/grid, we cannot provide ALL information about our facilities. We will provide sufficient information to verify compliance with the ordinance/franchise though.

B. If the City's audit of the books, records and other documents or information of the Utility Licensee, Utility Operator or Utility Provider demonstrate that there has been underpaid the usage fee, licensing fee, attachment fee or franchise fee or any other fee or payment by two percent (2%) or more in any one (1) year, the licensee, utility operator, or utility provider will reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 14 or as specified in other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, will be paid within thirty (30) days of the City's notice of such underpayment. Any overpayment will be credited toward the next quarterly payment owed to the City or in the event no payment is owed at the end of the next calendar quarter, City shall pay such amounts to the licensee, utility operator or utility provider within thirty (30) days after the end of such quarter.

D. The Licensee, Utility Provider or Utility Operator is not required to maintain records for more than ~~six~~ three (36) years. The City is not required to maintain records beyond the State retention schedules.

Section 16. Insurance and Indemnification.

A. Insurance.

1. All utility operators will maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
 - ii. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
 - iii. Three million dollars (\$3,000,000.00) for all other types of liability.
 - b. Commercial Automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000.00).
 - d. If not otherwise included in the policies required by subsection a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
 - e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
2. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance will be without prejudice to coverage otherwise existing and will name, or the certificate of insurance will name, with the exception of worker's compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) days prior written notice first being given to the City, and the certificate of insurance will include such an endorsement. If the insurance is canceled or materially altered, the utility operator will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator will maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
3. The utility operator will maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

- B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Ordinance is effective, and as necessary thereafter, the utility operator will provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes,

ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required under this Ordinance.

C. Indemnification.

Each utility licensee will ~~defend~~ indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility licensee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, ~~relocation~~ or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance or by a franchise agreement. The acceptance of a Utility license, or of a franchise granted by the City, will constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the City will notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

Commented [CL17]: The last sentence implies an option to defend rather than an obligation. The licensee would still be obligated to pay the costs of defense if it chose not to.

Commented [CL18]: We suggest consolidating paragraphs 1 and 2.

~~1. Every utility licensee will also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility licensee's failure to remove or relocate any of its facilities in a timely manner, unless the utility licensee's failure arises directly from the City's negligence or willful misconduct.~~

Section 17. Compliance.

Every Utility licensee, utility operator and utility provider will comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any Utility License granted under this Ordinance.

Section 18. Confidential/Proprietary Information.

If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City will not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

Section 19. Penalties.

A. Any person found in violation of any of the provision of this Ordinance or the Utility License will be subject to a penalty of not less than one hundred fifty dollars (\$150), nor more than twenty-five hundred dollars (~~\$2,500~~) for each offense. A violation will be deemed to exist separately for each and every day during which a violation exists.

B. Nothing in this Ordinance will be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Ordinance.

C. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this subsection 19.

Section 20. Severability and Preemption.

A. The provisions of this Ordinance will be interpreted to be consistent with applicable federal and state law, and will be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Ordinance will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Ordinance will be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision will be preempted only to the extent required by law and any portion not preempted will survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision will thereupon return to full force and effect and will thereafter be binding without further action by the City.

Section 21. Application to Existing Agreements.

To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing franchise agreements, this Ordinance will apply to all existing franchise agreements granted to utility operators and utility providers by the City.

Commented [CL19]: The scale of the penalties are significantly higher than we see in the majority of the cities in our service territory. \$500 is most common. This would be in addition to the penalties associated with intentional wrongdoing in Section 14.



2065 w. Riverstone drive ste. 105
Coeur d'Alene, id 83814

o 509 344 1008
f 509 344 1009

August 3, 2020

VIA USPS and ELECTRONIC MAIL

City Hall
ATTN: Mayor Eric Swenson
270 Montgomery Street
Woodburn, Oregon 97071

With a copy to:
ROW Consultants LLC
ATTN: Reba Crocker
E-Mail: reba@rowmanagers.com

RE: Proposed Adoption of Right-of-Way Ordinance

Dear Mayor Swenson:

As an attorney for Fatbeam, LLC ("Fatbeam"), it is my duty to protect Fatbeam's interest. It has come to my attention that the City of Woodburn (the "City") has decided to move forward with the adoption of a new Right-of-Way ("ROW") ordinance which will create a "substantial barrier to entry" for Fatbeam of the sell of its telecommunication services within the City, treat Fatbeam in a discriminatory manner, and create a fee that is not "fair and reasonable compensation . . . for use of public rights-of-way" under the Telecommunications Act, specifically 47 U.S.C. § 253.

As I am sure you are aware, in 1996 Congress made sweeping amendments to the Communications Act of 1934 ("Telecommunications Act"), 47 U.S.C. §§ 151 et seq., "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104 pmbl., 110 Stat. 56, 56; accord S. Rep. No. 104-230, at 1 (1996) (Conf. Rep.). Access to high speed fiber optic based services has been deemed an essential and critical service which has only become even more critical during this COVID pandemic.

Although the City has the absolute right to move to a ROW license instead of a franchise agreement, the City still has an obligation to treat all telecommunication providers in a competitively neutral and nondiscriminatory way. Under the Telecommunications Act, specifically 47 U.S.C. § 253(c), "a State or local government" may "manage the public rights-of-way" or "require fair and reasonable

compensation from telecommunications providers . . . for use of public rights-of-way” if the requirements operate “on a competitively neutral and nondiscriminatory basis” Id. § 253(c).

My understanding of the City's ordinance, and proposed use of the ROW license, is that a new telecommunications provider who is seeking entry into the City has to pay a large linear foot fee (\$3.00/foot) for its installation of conduit/facilities into the ROW, something no other telecommunications provider under an existing franchise agreement had to pay when it entered the Woodburn market.

A linear foot fee required for only new providers who wish to enter into the City is not competitively neutral and provides a barrier of entry into the City as every other competitor was able to build their network without paying a linear foot fee. All other telecommunications providers in the City received a Franchise Agreement which does not contain a linear foot fee on the construction of the network and instead provides a 7% fee on gross revenue (likely less than 7%, or a 0% for an ILEC/RBOC). Gross revenue only occurs after installation and is a fee Fatbeam also must pay, making the linear foot fee an additional fee only required for new providers in the City.

Section 253 entitled “Removal of Barriers to Entry,” provides: “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any . . . telecommunications service.” 47 U.S.C. § 253(a). The Supreme Court has described this provision as “prohibit[ing] state and local regulation that impedes the provision of telecommunications service.” *Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 491 (2002) (internal quotation marks omitted). If “a State or local government . . . permit[s] or impose[s] any statute, regulation, or legal requirement that violates” this provision, Section 253(d) directs that “the Commission shall preempt the enforcement of” the offending requirement. 47 U.S.C. § 253(d).

Additionally, it is well-settled case law, 23-year-old decision known as *California Payphone*, that has been reaffirmed multiple times by the Federal Communication Commission (“FCC”), that a state or local measure has “the effect of prohibiting” service, in violation of Section 253, if it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” [Small Cell Order](#) ¶¶ 16, 37– 42 (Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it “consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”¹⁷ *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (*California Payphone*). The FCC specifically stated that this standard applies even when telecommunications providers are first deploying services. [Id.](#) ¶ 37.

The City's ROW license requirement of a linear foot fee is not competitively neutral and is a direct barrier to entry being imposed on Fatbeam. Additionally, multiple courts and the FCC have found that state or locality ordinances have the effect of prohibiting service when it demands fees for telecommunications deployments that exceed any reasonable approximation of the actual costs it must incur due to the ROW use.

Fatbeam's ROW License Linear Foot Fee owed to the City could be hundreds of thousands of dollars. It is hard for me to see how the City could assert that such a large sum, in addition to the gross revenue fee Fatbeam would pay once it started collecting revenue, is a fee related to the City's actual costs and therefore is "fair and reasonable compensation . . . for use of public rights-of-way" under Section 253(c), when no other existing telecommunications provider under a City Franchise Agreement has paid such a fee for installation of its facilities in the ROW. If paying a large linear foot fee for installation of facilities into the City's ROW represents the direct and actual cost the City will suffer, wouldn't every telecommunications provider who has ever installed facilities in the City's ROW have paid a linear foot fee?

Please feel free to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Maves". The signature is stylized with a large, looped "D" and a cursive "Maves".

Danielle Maves, Esq.

Attorney

720-374-2030

Danielle@MavesLaw.com

cc:



August 10, 2020

Via Email

McKenzie Granum, Assistant City Attorney
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071
mckenzie.granum@ci.woodburn.or

Reba Crocker
ROW Consultants LLC
usreba@rowmanagers.com

Re: Verizon Wireless Comments--Woodburn OR ROW Ordinance

Ms. Granum and Ms. Crocker-

Thank you for the opportunity to comment on the proposed ordinance on behalf of Verizon Wireless. We appreciate the city's work to update the right of way code to allow for small wireless facilities and to comply with federal law. There are, however, a number of concerning issues we identify below and would accept your Ms. Crocker's offer of a virtual meeting to work through them:

1. Section 2 B PURPOSE AND INTENT, encourages the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City and suggests that full cost recovery are priorities for the city. The fee schedule does not reflect these priorities. Percentage of gross revenue fees have been recognized as not being reflective of actual costs.¹ This purpose section also speaks to the purpose of the utility license to reimburse the city's costs associated with the use of the right of way. Requiring a license and fees for persons who are providing communications services without actually using the right of way lacks the appropriate nexus to justify the requirement.

¹ Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018)("Order").

2. The term "attachment" is undefined in this ordinance. Verizon requests inclusion of this definition: "Attachment" means all of the physical components of a system or network, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, antennas, equipment, and other facilities, located within, under or above the ROW, any portion of which are used or designed to be used to deliver, transmit, or otherwise provide utility service.

3. Section 13 USAGE FEE --Section B--It is not clear why the city would be entitled to collect an attachment fee when an operator places equipment on ROW structures that are not owned by the city. The city is already made whole by the fees paid by the owner of the structure. It is also unclear in Section A as to whether a utility operator would pay both a right of way usage fee and an attachment fee. Verizon suggests that the city clarify that the utility operators that attach to city owned structures in the right of way and meet the criteria in Subsection B and will pay an attachment fee, and are not subject to the ROW Usage fee in Subsection A.

4. The city's fee schedule assesses a percentage of gross revenue fee for communications services other than small wireless facilities. The recent FCC Order specifically provides that gross revenue fees are not reflective of actual cost to the city for use of the right of way and that municipalities may not recover more than actual and reasonable costs for small wireless facilities in the right of way. Order at ¶170. Service and revenue cannot be broken down by type of equipment, so it would not be possible to calculate a gross revenue fee for macro sites only. Moreover, Verizon neither owns nor uses macro facilities in the right of way to provide communications services in Woodburn. To the extent that communications services are provided without use of any facilities within the right of way, there is no adequate nexus to assess a right of way use or license fee or to require a license.

5. Section 8 N (4) provides that there is no pro-rata refund of annual license fees in the event the operator terminates the license. This is an unearned windfall for the city and should be deleted.

August 11, 2020

Page 3

Thank you again for the opportunity to weigh in on the proposed ordinance. We look forward to working with you to help develop an ordinance that makes the city whole, complies with all applicable federal and state law and allows for reasonable use of the right of way.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kim Allen', with a long horizontal stroke extending to the right.

Kim Allen, Wireless Policy Group
On behalf of Verizon Wireless

COUNCIL BILL NO. 3137

ORDINANCE NO. 2583

AN ORDINANCE PROVIDING FOR THE MANAGEMENT OF ACCESS TO AND USE OF THE CITY'S RIGHTS-OF-WAY FOR UTILITY PURPOSES AND DECLARING AN EMERGENCY

WHEREAS, the City of Woodburn ("City") has a statutory and Constitutional authority to manage its rights-of-way and to receive compensation for private use of the rights-of-way consistent with applicable state and federal law;

WHEREAS, the City has generally granted individually-negotiated franchises to each utility using the City's rights-of-way to provide utility services;

WHEREAS, the City has determined that it can more effectively, efficiently, and fairly manage the City's rights-of-way and provide consistent standards for utility use of the rights-of-way through licenses rather than franchises;

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. The ordinance will be known and may be referenced as the Utility Service Ordinance.

Section 2. Purpose and Intent. The purpose and intent of this Ordinance is to:

A. Permit and manage reasonable access to and use of the City's rights-of-way for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Assure that the City's current and ongoing costs of granting and regulating access to, the use of the rights-of-way and utility services provisioned in the City, are fully compensated by the persons seeking such access and causing such costs;

C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning, controlling, using or operating facilities therein or generate revenue for utility services;

D. Assure that all utility companies, persons and other entities owning, operating facilities, using facilities, or providing services within the City comply with the ordinances, rules and all regulations of the City heretofore or hereafter amended or adopted;

1. For the purposes of this Ordinance, all utility services owned or operated by the City are excluded.
2. For the purposes of this Ordinance, all utility services owned or operated by other municipalities are excluded.

E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City by,

1. Allowing the City to enter into other or additional agreements with Utility Providers and Operators, if the public's interest is served, and to amend the requirement of this Ordinance and the City regulations, as new technology is developed;
2. Allowing the City to be resilient and adaptive to changes in technology; and

G. Comply with applicable provisions of state and federal law.

Section 3. Jurisdiction and Management of the Public Rights-of-way.

A. The City has jurisdiction and exercises regulatory management over, all rights-of-way within the City and provision of services, under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the right-of-way and does not obligate the City to maintain or repair any part of the right-of-way.

D. The provisions of this Ordinance are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, will be interpreted to be consistent with such laws, rules and regulations.

Section 4. Regulatory Fees and Compensation Not a Tax.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the rights-of-way and the provision of services provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and City charges, including but not limited to: any permit fee, or any other generally applicable fees, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider, franchisee or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. Definitions. For the purpose of this Ordinance the following terms, phrases, words and their derivations will have the meaning given herein. When not inconsistent with the context, words not defined herein will be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, and the Telecommunications Act. If not defined in those statutes, the words will be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

"Cable Act" means the Cable Communications Policy Act of 1987, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Calendar year" means January 1 to December 31, unless otherwise noted.

“City” means the city of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City council” means the elected governing body of the city of Woodburn, Oregon.

“City facilities” means City or publicly owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

“City standards” means the all ordinances, codes, regulations and rules of the City of Woodburn, in effect at the time of any work.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) public communications systems; (5) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (6) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Control” or “Use of Facilities” means actual working control over utility facilities in whatever manner exercised, whether or not the facility is owned. For example, but not limitation, Control means and includes leased capacity, transport, or any other use.

“Days” mean calendar days unless otherwise specified.

“Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation (including revenue derived from a leases or other agreements allowing use of facilities to other utility operators or providers), or use of utility facilities in the City, operation of a Communications Services or the provision of utility service(s) in the City, subject to all applicable limitations in federal or state law.

“License” or “Utility License” means the authorization granted by the City to a utility operator or utility provider pursuant to this Ordinance.

“Licensee” or “Utility Licensee” means any person that has a valid Utility licensed issued by the City.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining,

inspecting, and repairing of city facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

“Right-of-way” , “Rights-of-Way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Small Cell Wireless Facility” means Facilities owned or operated for the provision of communications that are shorter ranged, wireless systems affixed to a structure with generally smaller components than traditional Macro Wireless Facilities and are deployed where suitable in flexible configurations to provide capacity and coverage. Small Cell Wireless Facilities means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

“State” means the state of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds, or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “operator” means any person who owns, places, controls, operates or maintains a utility facility within the City.

“Utility provider” or “Provider” means any person who provides utility service or communication services to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, or cable services, to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 6. Business Registration. Business Registration Required. Every person that desires to use, operate or control utility facilities, or provide utility services to customers within the City will register with the City prior to use, operation, control of utility facilities, or providing any utility services to any customer in the City, in compliance with Ordinance No. 2399. Every person using, operating, controlling, or providing utility services to customers within the City as of the effective date of this Ordinance will obtain a Business Registration within thirty (30) days of the effective date of this Ordinance. Every person subject to this

Ordinance will renew and maintain a Business Registration as required in Woodburn's Ordinances that are heretofore or hereafter amended, at all times that the person, uses, operates, controls, provides or operates a utility services, to customers within the City.

Section 7. Utility License.

A. License Required. Except those utility operators and utility providers with a valid franchise or other valid agreement from the City, every person will obtain a Utility License from the City prior to conducting any work in or use of the ROW, or providing utility services or communication services to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

1. Every person that owns, or controls, provides utility services, or uses utility facilities in the rights-of-way as of the effective date of this Ordinance will apply for a Utility License from the City within thirty (30) days of the later of: (1) the effective date of this Ordinance, or (2) the expiration of a valid agreement granted by the City, unless a new agreement is granted by the City (3) for a person that is not a utility operator, providing utility services within the City.
2. The provisions of this section do not apply to any person subject to and in compliance with the cable television franchise requirement, except that subsection K will apply to the extent such person provides multiple services, subject to applicable law.

B. Utility License Application. The license application will be on a form provided by the City, and will be accompanied by any additional documents required by the application or the City, in the City's sole discretion, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provisioned, and other information necessary to determine the applicant's ability to comply with the terms of this Ordinance.

C. Utility License Application & Renewal Fee. The application and renewal application will be accompanied by a nonrefundable fee or deposit set by resolution of the City Council.

D. Determination by City. The City will issue, within a reasonable period of time, a written determination granting or denying the Utility License in whole or in part. If the Utility License is denied, the written determination will include the reasons for denial. The Utility License will be evaluated based upon the provisions of this Ordinance, the information contained on the Utility License application, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Changes to information contained on the Utility License application. Within thirty (30) days of a change to the information contained in the license application, the Licensee will notify the City in writing of such change(s).

F. Franchise and other Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and any communications provider – including cable providers, utility operator or utility provider, including Small Cell wireless providers, may enter into a written franchise or other agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Ordinance, consistent with applicable state and federal law. The agreement may conflict with the terms of this Ordinance with the review and approval of City Council. The franchisee will be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with the express provisions of any such franchise or agreement. In the event of a conflict between the express provisions of a franchise or other agreement and this Ordinance, the franchise or other agreement will control.

1. The provider requesting a franchise agreement will deposit a non-refundable fee, as set by resolution of the City Council before negotiations occur.

G. Rights Granted.

1. The Utility License granted hereunder will authorize and permit the licensee, subject to the provisions of the City regulations and ordinance and other applicable provisions of the City, state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate, control or use utility facilities in the rights-of-way for the term of the license for the provision of utility service(s) authorized in the license. In the event the licensee offers different service(s) than those authorized in the license, the licensee will inform the City of such changes no later than thirty (30) days after the change.

2. Any Utility License granted pursuant to this Ordinance will not convey equitable or legal title in the rights-of-way and may not be assigned or transferred except as permitted in subsection L of this section.

Neither the issuance of the Utility License nor any provisions contained therein will constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City, in existence at the time the license is issued or thereafter obtained.

H. Term. Subject to the termination provisions in subsection N of this section, the Utility License granted pursuant to this Ordinance will be effective as of the date it is issued by the City or the date services began, whichever comes first, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. Utility License Nonexclusive. No license granted pursuant to this section will confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license will be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

J. Reservation of City Rights. Nothing in the Utility License will be construed to prevent the City from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities will be removed or relocated as provided in subsections C, D and E of Section 9, in a manner acceptable to the City and consistent with City standards, industry standard engineering and safety codes in effect at the time the work is required.

K. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and Usage fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the Usage use fee, if any, owed to the City by another person using the utility operator's facilities.
2. A utility operator that provides or transmits more than one utility service to customers in the City may not be required to obtain a separate Utility License or franchise for each utility service, but is required to file separate reports, remittances and submit any Usage fees due for each service provided.

L. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the Utility Licensee will obtain the written consent of the City prior to the transfer or assignment of the license. The license will not be transferred or assigned unless:

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and/or provide the utility service authorized under the license; and
2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The Utility Licensee requesting the transfer or assignment will fully cooperate with the City and provide requested documentation, as the City deems necessary, in the City's sole discretion, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee will become responsible for fulfilling all obligations under the Utility License. A transfer or assignment of a license does not extend the term of the license.

M. Renewal. At least thirty (30) days, but no more than ninety (90) days prior to the expiration of a Utility License granted pursuant to this section, a licensee seeking renewal of its license will submit a license application to the City, including all information required in subsection B of this section and applicable fees required in subsection C of this section. The City will review the application as required by subsection D of this section and grant or deny the

license. If the City determines that the licensee is in violation of the terms of this Ordinance, or other City Ordinances, rules or regulations, at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

N. Termination.

1. Revocation or Termination of a Utility License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:
 - a. Violation of any of the provisions of this Ordinance;
 - b. Violation of any provision of the license;
 - c. Misrepresentation in a license application;
 - d. Failure to pay taxes, compensation, fees or costs due the City after final determination by the City, of the taxes, compensation, fees or costs;
 - e. Failure to restore the rights-of-way after construction as required by this Ordinance or other applicable state and local laws, ordinances, rules and regulations;
 - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors will be considered:
 - a. The egregiousness of the misconduct;
 - b. The harm that resulted;
 - c. Whether the violation was intentional;
 - d. The Licensee's history of compliance; and/or
 - e. The Licensee's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The City will give the Utility Licensee written notice of any apparent violations before terminating a Utility License. The

notice will include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the Licensee to demonstrate that the Licensee has remained in compliance, that the Licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the Licensee is in the process of curing a violation or noncompliance, the Licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the Licensee does not respond or if the City determines that the Licensee's response is inadequate, the City may revoke and/or terminate the Utility License.

4. Termination by Utility Licensee. If a licensee ceases to be required to have a Utility License, as defined under this Ordinance, the licensee may terminate or surrender its license, with a thirty (30) day notice to the City. Licensee may reapply for a Utility License at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.
 - a. Within thirty (30) days of surrendering a Utility License, the licensee will file a final remittance form with the City stating, "final remittance" and will remit any funds due.
 - b. Upon surrendering a Utility License, the licensee will file a written statement that it has removed, or will remove within 60 days, any and all facilities from the City and no longer provides Utility Services, as defined in this ordinance.

Section 8. Construction and Restoration.

A. Construction Codes. Utility facilities will be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the City Standards, in effect at the time of the work. When a utility operator, utility provider or licensee, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator will, at its own expense, promptly restore the rights-of-way as directed by the City consistent with applicable city codes, rules and regulations, in effect at the time of the work. A utility operator, utility provider, licensee or other person acting on its behalf will use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the rights of

way or property.

B. Construction Permits.

1. No person will perform any work on utility facilities within the rights-of-way without first obtaining all required permits. The City will not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, franchise agreement or other valid agreement (if applicable), required by this Ordinance, and all applicable fees have been paid. No permit is required for routine maintenance or repairs to customer service drops where such, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right of way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.
2. In the event of an Emergency, a utility operator or provider with a license pursuant to this Ordinance or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not later than 5:00pm PST of the next business day after commencing the emergency work.

Section 9. Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City:

1. All utility operators are required to make good faith effort to both cooperate with and coordinate their construction schedule with those of the City and other users.
2. Utility facilities will be installed underground in all areas of the City where there are no existing poles in the ROW, there is no space on existing poles in the ROW, or where the only poles in the ROW are used only for high voltage lines (as defined below). This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the utility operator has written authorization to place above-ground.

3. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within the ROW of the City, the utility operator with permission to occupy the same ROW will install all new facilities underground at no cost to the City. This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities will not be located in area of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the rights-of-way will be consistent with City codes, ordinances, rules and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities. Unless otherwise agreed to in writing by the City:

1. A utility operator will, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City. If relocation is required by the City, the City will bear no responsibility or incur any costs, to provide or in any way secure alternate locations.
2. Nothing herein will be deemed to preclude the utility operator from seeking reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator will timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The City may coordinate the schedule for relocation of utility facilities and based on such effort will provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate,

change, alter or underground any utility facility as requested by the City by the date reasonably established by the City, the utility operator will pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

4. The City will cooperate with the utility operator in securing alternate locations. However, the City will bear no responsibility or costs for securing alternate locations. The City will bear no responsibility to obtain, compensate, or otherwise assist the utility operator in relocation of its facilities to location not in the control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way will, at its own expense, remove the facility and restore the affected area.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility, or any portion of the facility, is outside the scope of authority granted by the City under the Utility License, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve (12) consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.

- c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Ordinance.
- d. The utility operator is in violation of a material provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move any utility, without notice, as the City determines, at its sole discretion to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The City will use best efforts to provide the utility operator with notice prior to cutting or moving facilities. If prior notice is not possible, the City will provide such notice as soon as reasonably practicable after resolution of the emergency.
2. If the utility operator fails to remove any facility when required to do so under this Ordinance, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator will be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove will survive the termination of the license or franchise.
3. The City will not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to this Section 9, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by this Section 9, unless such damage arises directly from the City's or its contractor's negligence or willful misconduct.

F. Engineering Record Drawings. The utility operator will provide the City with two complete sets of record drawings in a form acceptable to the City showing the location of all its utility facilities after initial construction if such plan changed during construction. The utility operator will provide updated complete sets of as built plans upon request of the City, but not more than once per year.

G. Facility Map. Utility operator, Utility provider and Utility Licensee will provide, at no cost to the City, a comprehensive map showing the location of any facility in the City. Such map will be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or Geodatabase format. The Utility Operator, Utility Provider and Utility Licensee will provide such map yearly by February 1 if any changes occurred during the prior year. The City may also request and will be provide the map, at no cost to the City, upon request, no more than once per year.

Section 10. Leased Capacity. A utility operator may lease capacity on or in its facilities to others, provided that the utility operator requires and has verified with the City, that the proposed lessor has obtained proper authority from the City prior to leasing capacity or allowing use of its facilities. Upon request, at no cost to the City, the utility operator will provide a complete list with the name, business address and contact information of any lessee. If requested by the City, the utility operator will also provide exact details of any attachment by lessee. A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law.

Section 11. Maintenance.

A. Every utility operator will install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator will, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 12. Vacation. If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator will, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City will make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 13. Usage Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the City's rights-of-way and every person that uses or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities used to provision the utility services and every person that provides utility services within the City, will pay the usage fee for every utility service provided in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on above-ground structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW (other than equipment necessary to operate the mounted facilities that has been expressly approved by the City to be placed in the ROW), will pay the attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter and will be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Usage fee payments required by this section will be reduced by any franchise fees or privilege taxes, due to the City, but in no case will be less than zero dollars (\$0).

E. Unless otherwise agreed to in writing by the City, the Usage fee set forth in subsection A of this section will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment will be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and will be provided at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the utility provider, utility operator or licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

F. The calculation of the Usage fee required by this section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers, utility operators and licensee subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the Usage fees or any other fees required by this Ordinance

Section 14. Penalties and Interest on Usage Fee. Penalties and interest imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in Section 13 will pay a penalty listed below in addition to the amount due:

1. First occurrence during any one calendar year; Ten percent (10%) of the amount owed, or Twenty-five dollars (\$25.00), whichever is greater.
2. Second occurrence during any one calendar year; Fifteen percent (15%) of the amount owed, or Fifty dollars (\$50.00), whichever is greater.
3. Third occurrence during any one calendar year; Twenty percent (20%) or the amount owed, or Seventy-five dollars (\$75.00), whichever is greater.

4. Fourth occurrence during any one calendar year; Twenty-five percent (25%) of the amount owed, or One hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or Five hundred dollars (\$500.00), whichever is greater, will be added thereto in addition to other penalties stated in section 14.

C. In addition to the penalties imposed, any person who fails to remit any fee when due as provided in Section 13 will pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City.

D. Every penalty imposed, and such interest as accrues under the provision of this section, will be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under Section 14.

Section 15. Audits and Records Requests.

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every Utility Licensee, Utility Operator and Utility Provider will furnish the City, at no cost to the City, with information sufficient to demonstrate compliance with all the requirements of this Ordinance, any franchise agreements or other agreements, if any, including but not limited to payment of any applicable Business Registration fee, licensing fee, usage fee, attachment fee, franchise fee or privilege taxes.
2. Every Utility Operator, Utility Provider and Utility Licensee will make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities or use of facilities, within the rights-of-way. Access will be

provided within the City unless prior arrangement for access elsewhere has been made and approved by the City.

B. If the City's audit of the books, records and other documents or information of the Utility Licensee, Utility Operator or Utility Provider demonstrate that there has been underpaid the usage fee, licensing fee, attachment fee or franchise fee or any other fee or payment by two percent (2%) or more in any one (1) year, the licensee, utility operator, or utility provider will reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 14 or as specified in other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, will be paid within thirty (30) days of the City's notice of such underpayment.

D. The Licensee, Utility Provider or Utility Operator is not required to maintain records for more than six (6) years. The City is not required to maintain records beyond the State retention schedules.

Section 16. Insurance and Indemnification.

A. Insurance.

1. All utility operators will maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
 - ii. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
 - iii. Three million dollars (\$3,000,000.00) for all other types of liability.
 - b. Commercial Automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000.00).
 - d. If not otherwise included in the policies required by subsection a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and

products completed hazard with limits of not less than three million dollars (\$3,000,000.00).

- e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
2. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance will be without prejudice to coverage otherwise existing and will name, or the certificate of insurance will name, with the exception of worker's compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) days prior written notice first being given to the City, and the certificate of insurance will include such an endorsement. If the insurance is canceled or materially altered, the utility operator will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator will maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
3. The utility operator will maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Ordinance is effective, and as necessary thereafter, the utility operator will provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required under this Ordinance.

C. Indemnification.

1. Each utility licensee will defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and

against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility licensee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance or by a franchise agreement. The acceptance of a Utility license, or of a franchise granted by the City, will constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the City will notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility licensee will also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility licensee's failure to remove or relocate any of its facilities in a timely manner, unless the utility licensee's failure arises directly from the City's negligence or willful misconduct.

Section 17. Compliance. Every Utility licensee, utility operator and utility provider will comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any Utility License granted under this Ordinance.

Section 18. Confidential/Proprietary Information. If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably

possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City will not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

Section 19. Penalties and Violations.

A. Any person found in violation of any of the provisions of this Ordinance or the Utility License will be subject to a penalty of not less than one hundred fifty dollars (\$150), nor more than twenty-five hundred dollars (\$2,500) for each offense, and shall be processed in accordance with the Civil Infraction Ordinance (Ord. No. 1998). A violation will be deemed to exist separately for every section violated and be assessed each and every day during which a violation exists.

B. Nothing in this Ordinance will be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Ordinance, including those Civil Infractions that may be imposed under Ordinance 1998.

C. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this subsection 19.

Section 20. Severability and Preemption.

A. The provisions of this Ordinance will be interpreted to be consistent with applicable federal and state law, and will be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Ordinance will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Ordinance will be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision will be preempted only to the extent required by law and any portion not preempted will survive. If any federal or state law resulting in

preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision will thereupon return to full force and effect and will thereafter be binding without further action by the City.

Section 21. Application to Existing Agreements. To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing franchise agreements, this Ordinance will apply to all existing franchise agreements granted to utility operators and utility providers by the City.

Section 22. Emergency Clause. This ordinance being necessary for the immediate preservation of the public peace, health, and safety since it is in the City's interest to have this regulatory program in place for utility services that occupy City right-of-way, an emergency is declared to exist and this ordinance shall take effect as of October 1, 2020.

Approved as to form: _____
City Attorney Date

Approved: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

COUNCIL BILL NO. 3138

RESOLUTION NO. 2162

**A RESOLUTION SETTING THE RIGHT-OF-WAY UTILITY LICENSE AND USAGE FEE RATES
WITHIN THE CITY OF WOODBURN**

WHEREAS, the City of Woodburn ("City") has constitutional and charter authority to manage its rights-of-way and utility usage within the City; and

WHEREAS, the Woodburn City Council adopted an ordinance regulating utilities operating within the City and exercising the City's authority to secure compensation to the City and its residents for utility use;

WHEREAS, per the ordinance the Woodburn Council shall by resolution establish Utility Licensing fees;

WHEREAS, per the ordinance the Woodburn Council shall by resolution establish a Franchise negotiations fee; and

WHEREAS, per ordinance the Woodburn City Council shall by resolution establish Usage fees; **NOW, THEREFORE**,

THE CITY OF WOODBURN RESOLVES AS FOLLOWS:

Section 1. The Utility License application fee shall be \$300.00 (excluding Small Cell Wireless Facilities) and shall include an initial five-year license (if approved).

Section 2. Utility License application fee for Small Cell Wireless Facilities, as they involve both access to rights-of-way and vertical infrastructure shall be \$500.00 for up to 5 sites and \$100.00 for each additional site, plus any additional reasonable fees the City must incur for outside expertise to evaluate such applications, including compliance with the Federal Communication Commission "RF" standards.

Section 3. The Utility License renewal fee (excluding Small Cell Wireless Facilities) shall be \$250.00 for a five-year license.

Section 4. The refundable franchise negotiation deposit shall be \$5,000.00;

Section 5. The usage fee shall be as follows, to the extent permitted under applicable law:

<i>Service</i>	<i>Usage Fee Rate</i>
Electric: Provides services to customer within Woodburn via owned or non-owned facilities located within the City's ROW	5% of gross revenue
Natural Gas: Providing services to customer within Woodburn via owned or non-owned facilities located within the City's ROW.	5% of gross revenue
Cable Television	5% of gross revenue
Communications* (other than Small Cell Wireless** Facilities): Providing services to customer within Woodburn via owned or non-owned facilities located within the City's ROW	7% of gross revenue
Attachment fee (other than Small Cell Wireless** Facilities)	\$5,000 per attachment per year
Small Cell Wireless** Communications Facilities	\$270.00 per attachment per year
Usage of owned or non-owned facilities in the rights-of-way for purposes other than generating revenue or providing services to customers within the City.	\$3.00 per linear foot of Utility Facilities in the rights-of-way or a minimum annual fee of \$5,000.00, whichever is greater. The per-linear-foot fee and the minimum fee shall increase 3% annually on July 1 st of each year, beginning July 1, 2022

"Gross Revenue" shall have the meaning defined in the Utility Services Ordinance.

Section 6: The annual attachment fee (excluding Small Cell Wireless Facilities) shall be \$5,000.00 per attachment. The attachment fee shall increase 3% annual on July 1st of each year, beginning on July 1, 2022.

Section 7: The annual attachment fee for Small Cell Wireless Facilities shall be the fair market value of such attachments, but until the Federal Communications Commission September 26, 2018 small cell order is overturned, City staff are directed to establish what the reasonable approximation of costs for such attachment are, but it no case less than \$270.00 per attachment, per year.

* "Communications" shall have the meaning defined in Woodburn's Utility Service Ordinance and shall include telecommunication utilities, long distance providers, private networks, wireless, wireline, VoIP, ILEC, CLEC, inter and intrastate.

** "Small Cell Wireless Facilities" shall have the meaning defined in Woodburn's Utility Service Ordinance.

Section 8. The fees implemented by this Resolution take effect on October 1, 2020.

Approved as to Form: _____
City Attorney Date

APPROVED: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

COUNCIL BILL NO. 3139

RESOLUTION NO. 2163

A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET FOR FY 2020-2021

WHEREAS, ORS 294.463(1) permits “transfers of appropriations” within any fund “when authorized by official resolution or ordinance of the governing body”; and

WHEREAS, ORS 294.463(2) limits “transfers of general operating contingency appropriations to no more than fifteen (15) percent of the total appropriations of the fund” unless adopted pursuant to a supplemental budget; and

WHEREAS, transfers made pursuant to any of the above must state the need for the transfer, the purpose for the authorized expenditure, and the amount of the appropriation transferred; and

WHEREAS, ORS 294.471(1)(a) permits supplemental budgets when “an occurrence of condition which had not been ascertained at the time of the preparation of a budget for the current year or current budget period which requires a change in financial planning”; and

WHEREAS, ORS 294.473 requires the governing body to hold a public hearing on the supplemental budget when the estimated expenditures contained in the supplemental budget for fiscal year or budget period differ by ten (10) percent or more of any one of the individual funds contained in the regular budget for that fiscal year; and

WHEREAS, the transfers contained herein are made pursuant to ORS 294.463; and

WHEREAS, the supplemental budget contained herein is made pursuant to ORS 294.471; and

WHEREAS, a public hearing was held September 14, 2020 on the supplemental budget changes, **NOW, THEREFORE**,

THE CITY OF WOODBURN RESOLVES AS FOLLOWS:

Section 1. That pursuant to the applicable ORS provisions cited above, the City Council hereby approves the supplemental budget for FY 2020-21 in the amounts shown below for the purposes of funding the federal grant allocation to COVID-19 related expenses and the Business Oregon grant funds for small business relief.

SUMMARY OF PROPOSED BUDGET CHANGES							
AMOUNTS SHOWN ARE REVISED TOTALS IN THOSE FUNDS BEING MODIFIED							
General - 001							
Resource	Original	Change	Revised	Requirement	Original	Change	Revised
1 Revenues	15,254,420	750,000	16,004,420	Operating Expenses	15,254,420	750,000	16,004,420
Revised Total Fund Resources			16,004,420	Revised Total Fund Requirements			16,004,420
Comments: Federal Grant allocated to COVID-19 related expenses & Business Oregon Grant Funds.							

Approved as to Form: _____
City Attorney _____ Date _____

APPROVED: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

September 14, 2020

TO: Honorable Mayor and City Council through City Administrator
FROM: Jim Row, Assistant City Administrator
SUBJECT: **T-Mobile Water Tower Site Lease Agreement**

RECOMMENDATION:

Authorize the City Administrator to enter into the attached Water Tower Site Lease Agreement with T-Mobile.

BACKGROUND:

The City and T-Mobile are currently parties to a site lease agreement that authorizes them to locate cellular telephone antennae and associated equipment on the City's downtown water tower. The lease was executed in 2001 and, as provided for in the agreement, has automatically renewed three times (2006, 2011, 2016). With no further renewals available, the lease is set to expire in September 2021. As is customary with leases of this nature, the City and T-Mobile began renewal negotiations approximately 2½ years prior to the expiration of the current lease.

T-Mobile currently pays \$1,400.75 per month in rent.

In addition to T-Mobile, the City leases space on the water tower to Sprint and Verizon for the placement of similar cellular telephone equipment.

DISCUSSION:

The lease that is presented to the City Council tonight is similar in many respects to the current lease. Key provisions of the proposed lease document include the following:

- The initial term of the lease will be five (5) years, beginning August 1, 2021
- The lease will automatically renew for three (3) additional five (5) year terms, unless the City provides notice of termination at least ninety (90) days prior to the expiration of the initial term or any renewal term

- T-Mobile will pay the City \$2,000 per month in rent initially
- The rent amount will increase 3% each year
- Upon receiving 180 days' advance notice, T-Mobile is required to relocate their equipment, at their own expense, should it be necessary in order for the City to conduct maintenance activities on the water tower
- In addition to default related termination clauses, the City may, with City Council approval, provide T-Mobile with a one (1) year written termination notice
- T-Mobile may also terminate the lease agreement with one (1) year written notice

FINANCIAL IMPACT:

T-Mobile will pay the City \$2,000 per month in rent for the first year. The rent amount will increase 3% annually thereafter. Rent paid by T-Mobile supports General Fund programs, such as police, parks and recreation and the library.

WATER TOWER SITE LEASE AGREEMENT

T-MOBILE FACILITY SITE

THIS WATER TOWER SITE LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 20____, ("Effective Date") between the City of Woodburn, an Oregon municipal corporation ("Landlord") and T-Mobile West LLC, a Delaware limited liability company ("Tenant").

BACKGROUND

- A) Landlord is the owner of a parcel of land located in the City of Woodburn, Oregon, which is the site of an elevated municipal water tower.
- B) This agreement provides for Tenant's lease of a portion of Landlord's property and water tower for certain permitted uses.

The Parties Agree as Follows:

AGREEMENT

1. Premises. Landlord owns a parcel of land ("**Land**") and a water/telecommunications tower ("**Tower**") located in the City of Woodburn, County of Marion, State of Oregon, commonly known as 106 Broadway, Woodburn, Oregon 97071. The Tower and the Land are collectively referred to herein as the "**Property**." The Land is more particularly described in Exhibit A attached hereto. Subject to the following terms and conditions, Landlord leases to Tenant certain designated space on the Landlord's Tower. Tenant's use of the Property shall be limited to that portion of the Property together with easements for access and utilities, described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises").

2. Term & Renewal.

2.1 The initial term of the Lease will be five years, beginning on August 1, 2021 (the "Commencement Date") and terminating at midnight on July 31, 2026 ("Initial Term").

2.2 Tenant shall have the right to extend this Lease for three (3) additional five (5) year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein.

2.3 This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

2.4 If Tenant remains in possession of the Premises at the expiration of the initial term or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

3. Rent.

3.1 Upon the Commencement Date, Tenant shall pay Landlord, as rent, the sum \$2,000 per month ("Rent"). Rent shall be payable on the first day of each month in advance to Landlord at the address set out under Section 3.2 below. Notwithstanding the foregoing, Rent for the first month of the Initial Term will be due within thirty (30) days following the Commencement Date.

3.2 Tenant shall pay all rent to the City of Woodburn by check, mailed or personally delivered to the City of Woodburn, Finance Department, 270 Montgomery St. Woodburn, Oregon 97071.

3.3 If Landlord receives any rent payment from Tenant more than 5 calendar days past due, Landlord may impose a Late Fee of \$100.00 for each month that amounts owed by Tenant remain unpaid. All Late Fees are due and payable once assessed and become part of the balance owed by Tenant under this Lease.

No new agreements or contract extensions will be made between Landlord and Tenant during any period that a delinquent balance remains owing under this Lease.

3.4 Upon the anniversary of the Commencement Date each year, the Rent shall increase by three (3) percent of the preceding year's Rent.

3.5 If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be refunded to Tenant.

4. Permitted Use. The Premises may be used by Tenant only for permitted uses, which are the transmission and reception of communication signals and for the construction, installation, operation, maintenance, repair, addition, removal or replacement of the related facilities, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, and any other radiation and safety requirements) in connection with Tenant's use, operation, maintenance, construction, and/or installation of its equipment. Tenant shall obtain, at Tenant's expense, all licenses and permits required for Tenant's use of the Premises from all applicable government and/or regulatory entities (the "Governmental Approvals") and may, prior to the Commencement Date obtain a title report, perform surveys, soil tests, and other engineering procedures on, under and over the Property, necessary to

determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Landlord agrees to reasonably cooperate with Tenant (at no cost to Landlord), where required, to perform such procedures or obtain Governmental Approvals.

By taking possession of the Premises, Tenant accepts the Premises in the "as-is" condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Premises and Landlord shall not be liable for any latent or patent defects in the Premises.

5. Interference. Tenant shall not use the Premises in any way which interferes with the existing use of the Property by the Landlord, or with any use by another tenant which use existed at the time that this Lease was executed. No materials shall be used in the installation of the antennas or transmission lines that will cause corrosion or deterioration of the Tower structure or its appurtenances. Landlord will not permit or suffer the installation of any equipment on Landlord's Property after the Commencement Date that: (i) results in technical interference problems with Tenant's equipment, or (ii) encroaches onto the Premises.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any equipment space.

6. Temporary Relocation. Upon request of the Landlord, Tenant agrees to relocate its equipment on a temporary basis to another location on the Property, hereafter referred to as the "Temporary Relocation", for the purpose of the Landlord to perform general upkeep, routine maintenance, repair, cosmetic work (e.g. painting), or similar work at the Property or on the Tower provided:

- a) The Temporary Relocation required is once per five (5) year term of the lease agreement;
- b) Tenant pays all costs incurred for relocating Tenant equipment to the Temporary Relocation and improving the Temporary Relocation so that it is fully compatible for the Tenant's use;
- c) Landlord shall provide Tenant at least one-hundred eighty (180) days written notice prior to requiring Tenant to relocate;
- d) Tenant's use of the Property is not interrupted or diminished during the Temporary Relocation and Tenant is allowed, if reasonably determined, to place a temporary installation on the Property during the Temporary Relocation. Should Tenant experience an interruption, stoppage, or other issue with service due to moving to the Temporary Relocation, Landlord shall provide Tenant with an abatement of the Rent for each day of disruption; and

- e) Upon completion of any maintenance, repair, or similar work by the Landlord, the Tenant shall be permitted to return to its original location from the Temporary Relocation with all costs related to the relocation of the Tenant equipment being paid by the Tenant.
- f) If the Parties cannot agree upon a suitable area for Temporary relocation then Tenant may terminate the Lease in its reasonable judgment upon written notice to Landlord, without penalty or further obligation.

7. Maintenance.

7.1 The Landlord shall keep the Tower in good repair as required by applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the American with Disabilities Act and laws regulating hazardous substances). The Landlord shall comply with all rules and regulation enforced by the Federal Aviation Administration with regard to the lighting, marking, and painting of the Tower.

The Tenant shall notify the Landlord in writing of any observed deficiency in the repair or maintenance of the Tower. The Landlord will respond within 30 days of notification of a Tower deficiency.

7.2. Tenant shall, at its own expense, maintain the Premises and any equipment on or attached to the Premises in a safe and commercially reasonable condition, in good repair, and in a manner suitable to Landlord so as not to conflict with the use of or other leasing of the Tower by Landlord. Tenant shall have the sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition.

8. Improvements; Utilities; Access.

8.1 Tenant shall have the right, at its expense, to maintain on the Premises communications facilities: antenna poles, antennas, coax, related appurtenances, and equipment cabinet(s) or vault(s) as identified on Exhibit B, (collectively the "Antenna Facilities"). Landlord's prior consent to the plans and specifications for equipment upgrade improvements by Tenant shall be required, which consent will not be unreasonably withheld, conditioned or delayed. Landlord will not be entitled to any additional rent or other fees for its review or approval. Notwithstanding the foregoing, Tenant may perform maintenance, repairs, and make like-kind or similar replacements of Antenna Facilities and modifications within the interior of any shelters or base station

equipment without the prior consent of Landlord.

8.2 Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant and are not fixtures.

8.3 Tenant shall remove the Antenna Facilities upon termination or expiration of this Lease within 90 days and shall return the Premises to approximate original condition except ordinary wear and tear and shall be liable for any damage caused by Tenant's construction, installation, repairs, relocation, or removal of Antenna Facilities. If Tenant fails to vacate and surrender the Premises when required by this Lease, Landlord may elect to (i) retain or dispose of Tenant's Antenna Facilities as Landlord sees fit; or (ii) remove the Antenna Facilities and place them in storage for Tenant's account, in which case Tenant shall be liable for the cost of removal, transportation and storage, plus interest from the date of expenditures.

8.4 Tenant shall separately meter and pay any additional utility charges due to Tenant's use. Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises. Landlord hereby grants an easement to permanently place any utilities on or to bring utilities across the Property in order to service the Premises and the Antenna Facilities. Utilities shall be limited to the location(s) shown on the attached Exhibit B and be limited to power, fiber, and copper telecommunication utilities.

8.5 As partial consideration for rent paid under this Lease, Landlord hereby grants Tenant an easement ("Easement") for ingress, egress and access to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon thirty (30) days prior written notice, Landlord shall have the right, at Landlord's sole expense, to relocate the Easement to Tenant, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease.

8.6 Tenant shall have 24-hour-a-day, 7-day-a-week access to Premises at all times during the term of this Lease and any Renewal Term, except during an emergency. For the purpose of this Lease and at Landlord's sole determination, an "emergency" is defined as any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous materials, disease, blight, infestation, civil disturbance, riot, sabotage and war. Landlord shall make reasonable effort to notify Tenant that an emergency exists that would prohibit or limit access to the Premises.

9. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

9.1 Upon (fifteen) 15-days written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that 15 day period.

9.2 Upon thirty (30)-days written notice by either party if the other party commits a non-monetary default and fails to cure or commence curing such default within this thirty (30) day period. If a non-monetary default cannot reasonably be cured within a 30-day period, this Lease may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

9.3 Upon ninety (90)-days written notice by Tenant, if it is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business.

9.4 Immediately upon written notice by Tenant if the Premises or Property are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Premises. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant.

9.5 Immediately upon written notice by Landlord, if Landlord determines in its sole discretion that continued use of the Tower by Tenant is in fact a threat to health, safety or welfare, or violates applicable laws or ordinances, or it Tenant's facilities are deemed by the landlord to cause interference to the public safety communications system.

9.6 Upon one (1) year written notice by Landlord, if the Woodburn City Council determines in its sole discretion that the public interest so requires termination of this Lease.

9.7 Tenant may terminate the agreement at any time upon written notice to the Landlord if it determines that the use of the Premises is obsolete or unnecessary in its sole discretion and subject to paying the Landlord one (1) year termination fee of the then current rent.

10. Condemnation. In the event the Premises are taken by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the proceeds paid for the taking and the Landlord shall receive the full amount of the proceeds. Tenant shall hereby expressly waive any right or claim to any portion thereof and all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, shall belong to Landlord. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and

any costs or expenses incurred by Tenant in relocating or removing its equipment, personal property, Antenna Facilities, and improvements. Tenant may claim prepaid Rent against Landlord if this Lease is terminated pursuant to this Section.

11. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Tenant shall indemnify Landlord from any and all liability, obligation, damages, penalties, claims, liens, charges, losses and expenses, which may be imposed upon, incurred by, or be asserted against Tenant in relation to the taxes owed or assessed on the Premises.

12. Indemnification. Tenant shall defend, indemnify and hold harmless Landlord, its officers, agents and employees, from any liability, loss or damage Landlord may suffer (including any reasonable attorney's fees and expenses) as a result of claims, demands, actions, suits, costs or damages against Landlord of any kind whatsoever in connection with or arising out of (i) any violation of law, ordinance or covenant or condition of this Lease by Tenant, its agents, employees, invitees or visitors, or (ii) any injury or damage occurring to any person or to property of any kind belonging to any person while on or in any way connected with any portion of the Premises during the term of this Lease which results from or is caused by Tenant's use of the Premises, except for any loss or damage caused to Tenant or others or to property of Landlord, Tenant, or any other person as a result of the sole negligence or willful acts of Landlord, its officers, agents or employees. Tenant shall give Landlord prompt notice in case of casualty or accidents on the Premises. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than resulting from sole negligence or willful acts of Landlord, its officers, agents and employees.

13. Limitation of Liability. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

14. Insurance. Tenant shall maintain general liability including bodily injury and property damage insurance including fire legal liability, that includes Landlord and its officers, agents and employees as additional insureds as it relates to risks, claims, demands, actions and suits for damage to property including, but not limited to, cracking or breaking of glass, or personal injury, including death, arising from Tenant's activities. The insurance shall provide coverage commercial general liability for not less than \$2,000,000 for each occurrence, and \$4,000,000 aggregate. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the terms of this Lease. The insurance shall be without prejudice to coverage otherwise existing and shall include as additional insureds Landlord and its officers, agents and employees. Notwithstanding the listing of additional insureds, the insurance shall protect each insured in the same manner as

though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been listed as insured. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Recorder.

Tenant agrees to maintain continuous, uninterrupted coverage for the duration of the Lease. If the insurance is canceled or terminated prior to termination of the Lease, Tenant shall provide a new policy with the same terms. Tenant shall maintain on file with the City Recorder a certificate of insurance certifying the coverage required by this section. Failure to maintain liability insurance shall be cause for immediate termination of this Lease by Landlord. Landlord shall have the right to increase the limits of insurance coverage required by this Lease during the Lease term in order to match any statutory changes as to the maximum limits of liability on Oregon municipalities. In the event Landlord determines that the insurance limits should be increased on this basis, Landlord shall provide notice to Tenant of such determination and Tenant shall promptly increase the coverage amounts to comply with the new limits and provide Landlord an updated certificate. Under no circumstances shall Landlord be responsible for or provide insurance to cover loss or damage of Tenant's equipment or personal property. Tenant shall have the right to self-insure the above-required coverages.

15. Notices. All notice, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by standard overnight carrier to the following addresses:

If to Landlord, to:
City Administrator, City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071

If to Tenant, to:
T-Mobile West USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/Site ID PO00420A

16. Quiet Enjoyment. Landlord warrants that it is in lawful possession of the leased Premises and has the right to lease them. Notwithstanding other provisions in this Lease to the contrary, Landlord will defend Tenant's right to quiet enjoyment of the leased premises from the lawful claims of all persons during the lease term and any renewal terms.

17. Assignment. This Agreement may be sold, assigned, or transferred by the Tenant, with written notice of the Landlord within a reasonable period of time following such sale, assignment or transfer, to the Tenant's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of the Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned, or transferred without the written consent of the Landlord, which consent will not be unreasonably withheld, conditioned or delayed. No change in stock ownership, partnership interest or control of the Tenant or transfer upon partnership or corporate

dissolution of the Tenant shall constitute an assignment hereunder.

18. Hazardous Materials. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Tenant shall not introduce or use any such substance on the Property in violation of any applicable law. Landlord will be solely responsible for and will defend, indemnify, and hold Tenant, its agents and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Property with respect to substances from any and all sources other than those substances introduced to the Premises by Tenant. The obligations of this Section shall survive the expiration or other termination of this Lease.

19. Entire Agreement. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

20. Cooperation. Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease) necessary to protect the other party's rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party.

21. Choice of Law. This Lease shall be construed in accordance with the laws of the State of Oregon.

22. Severability. If any term of this Lease is found to be invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

23. Memorandum of Agreement. Landlord agrees to promptly execute and deliver to Tenant a recordable Memorandum of Agreement in the form of Exhibit C, attached hereto.

24. Termination of Prior Agreement. Landlord and Tenant are currently landlord and tenant under that certain Site Lease Agreement dated September 17, 2001 ("Prior Agreement"). Landlord and Tenant hereby agree that this Agreement shall only commence upon the full expiration of the Prior Agreement. Tenant shall remain liable for all fees and expenses and other amounts coming due under the Prior Agreement up to and including the Prior Agreement Termination Date, even if such sums are billed subsequent to the Prior Agreement Termination Date. The termination of the Prior Agreement shall be effective without further documentation.

WATER TOWER SITE LEASE AGREEMENT

Signature Page

The parties are signing this agreement on the date stated in the introductory clause.

CITY OF WOODBURN, OREGON

Scott Derickson, City Administrator
City of Woodburn

T-MOBILE WEST LLC

BY: _____
ITS: _____

EXHIBIT A

Page 1 of 2

Legal Description

The following described property affects Tax Lot 13100:
Lots 1, 2, 3, and 4 in Block 6, Woodburn Packing Company's Addition to Woodburn, excepting right of way of Oregon and California Railroad across the same, as the same was established on the twelfth day of August, 1902. Except the following boundries and described property agreed by Union Light and Power Company to be conveyed to the Oregon and California Railroad Company by memorandum of agreement made and entered into by and between Union Light and Power Company and the Oregon and California Railroad Company on the twenty-ninth day of September, 1905, and particularly described in said agreement as follows, to-wit:

All of lot numbered 5 in Block numbered 6 and also all of those parts of lots numbered 2, 3, and 4 of said Block 6 lying South of a line drawn 8 feet Northerly from and parallel with the center line of a proposed wye track surveyed and staked out upon the said Block 6, all in Woodburn Packing Company's Addition to Woodburn (a print of which said property and said proposed wye track is attached to said agreement and part thereof, for the purpose of elucidating the above description and said memorandum of agreement.) Deed for the above described property is recorded in Record of Deeds of said Marion County, Volume 92, Page 332, on the twenty-ninth day of March, 1906.

Also that certain parcel of real property described as follows, to-wit: Beginning at a monument on the Northwest corner of Block numbered 6 of Woodburn Packing Company's Addition to Woodburn; thence on a course parallel with the main line of the Southern Pacific Company South 41°15" West a distance of 75 feet more or less to a point 8 feet distant from and measured at right angles to the center line of a proposed wye track staked out and located across the said Block 6; thence Easterly on a curve to the left on a line parallel with and 8 feet distant from said center line 80 feet more or less to an intersection with the South line of lot 2 of said Block 6; thence Northwesterly along the South lines of lots 1 and 2 of said Block 6 to the place of beginning, deed for which is recorded in Marion County Record of Deeds, Volume 92, Page 332, on the twenty-ninth day of March, 1906.

The following described property affects Tax Lot 13200:
Beginning at the Southeast corner of the Depot Grounds belonging to the Southern Pacific Railroad Company in Woodburn, Marion County Oregon; thence South 41°15' West to the Northerly line of that certain tract of land describe in deed from S. A. Hoefer and wife to the City of Woodburn, recorded in Volume, 320, Page 219 of the Record of Deeds for Marion County, Oregon; thence Westerly along said Northerly line to the Easterly line of the Southern Pacific Railroad Company's right-of-way; thence Northerly along the Easterly line of said right-of-way to the Southerly line of the Depot Grounds; thence Easterly along said Southerly line to the Place of Beginning.

EXHIBIT A

Page 2 of 2

Legal Description

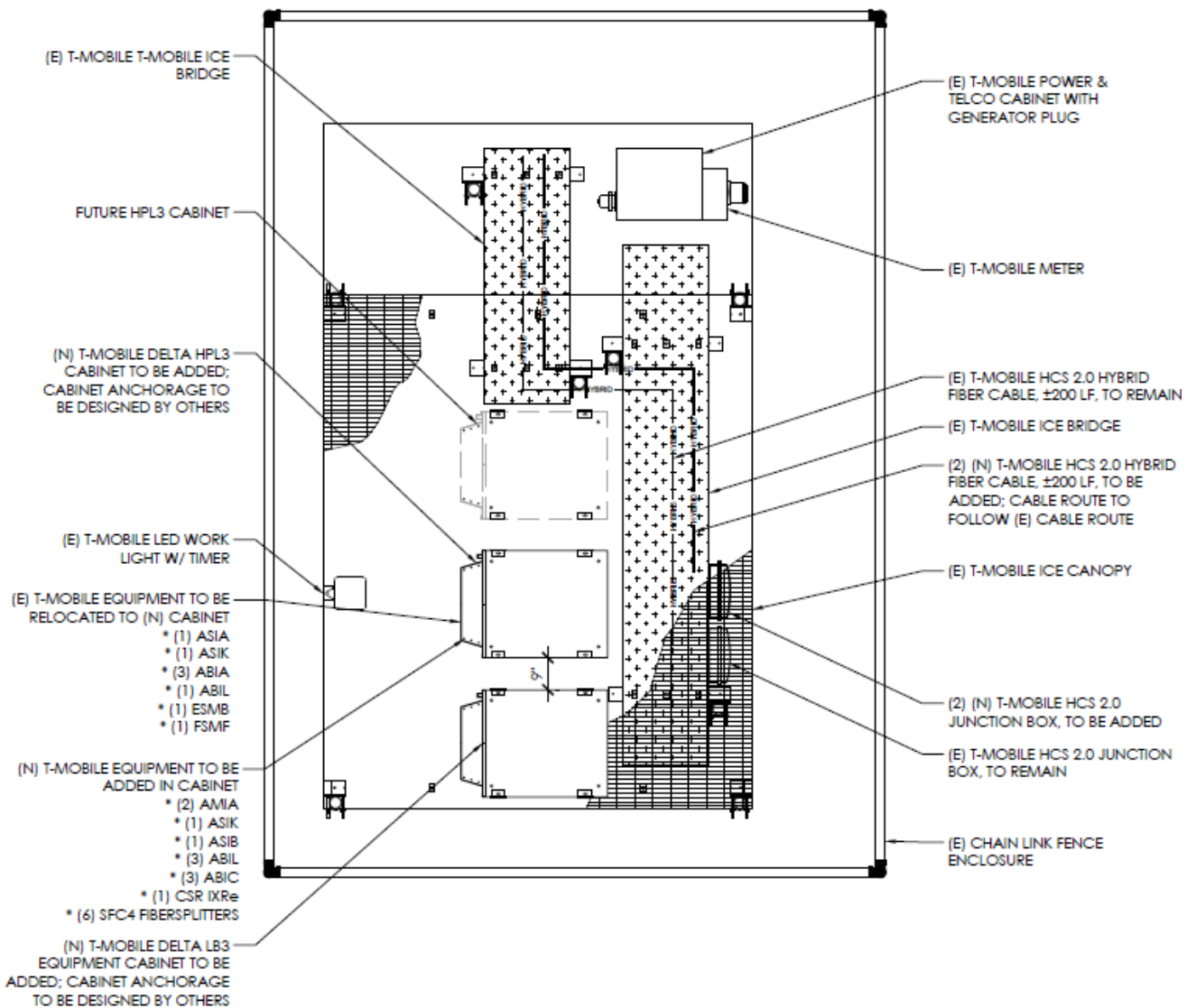
The following described property affects Tax Lot 13300:

Beginning on the East boundary of the right-of-way of the S.P.R.R. where the North boundary of the County Road leading from Woodburn to the Town of Monitor, in Marion County, Oregon, crosses the said railroad, said County Road being also known as Cleveland Street, in Woodburn, Oregon; running thence Northeasterly along the East boundary of the S.P.R.R. to the lands of U.G. Dunn; thence on the South boundary of said Dunn's land 100 feet to the Southeast corner of said lands; thence along the West boundary of the Woodburn Packing Company's Addition to the Town of Woodburn, same being in a Southwesterly direction and parallel to the main line of the S.P.R.R. to the lands of the S.P.R.R.; thence in a Southwesterly direction along the grounds of the S.P.R.R. to the North boundary of the above mentioned street or road; thence to the place of beginning.

ALSO: Beginning at the Northwest corner of Lot 1, Block 6 in said Woodburn Packing Company's Addition; thence North 19°00' West 25 feet to a point; thence South 41°15' West 87.60 feet to a point, distant 30 feet North 41°15' East from the Southwesterly line of said Block 6 as shown on the duly recorded Plat of Woodburn Packing Company's Addition; thence Southeasterly on a curve to the right having a radius of 241.97 feet (tangent to said curve at last mentioned point bears South 78°19'39" East and chord of said curve bears South 75°27'00" East 24.29 feet) an arc distance of 24.30 feet to a point; thence North 41°15' East 64.28 feet to the point of beginning.

EXHIBIT B

Tennant's equipment and location diagram



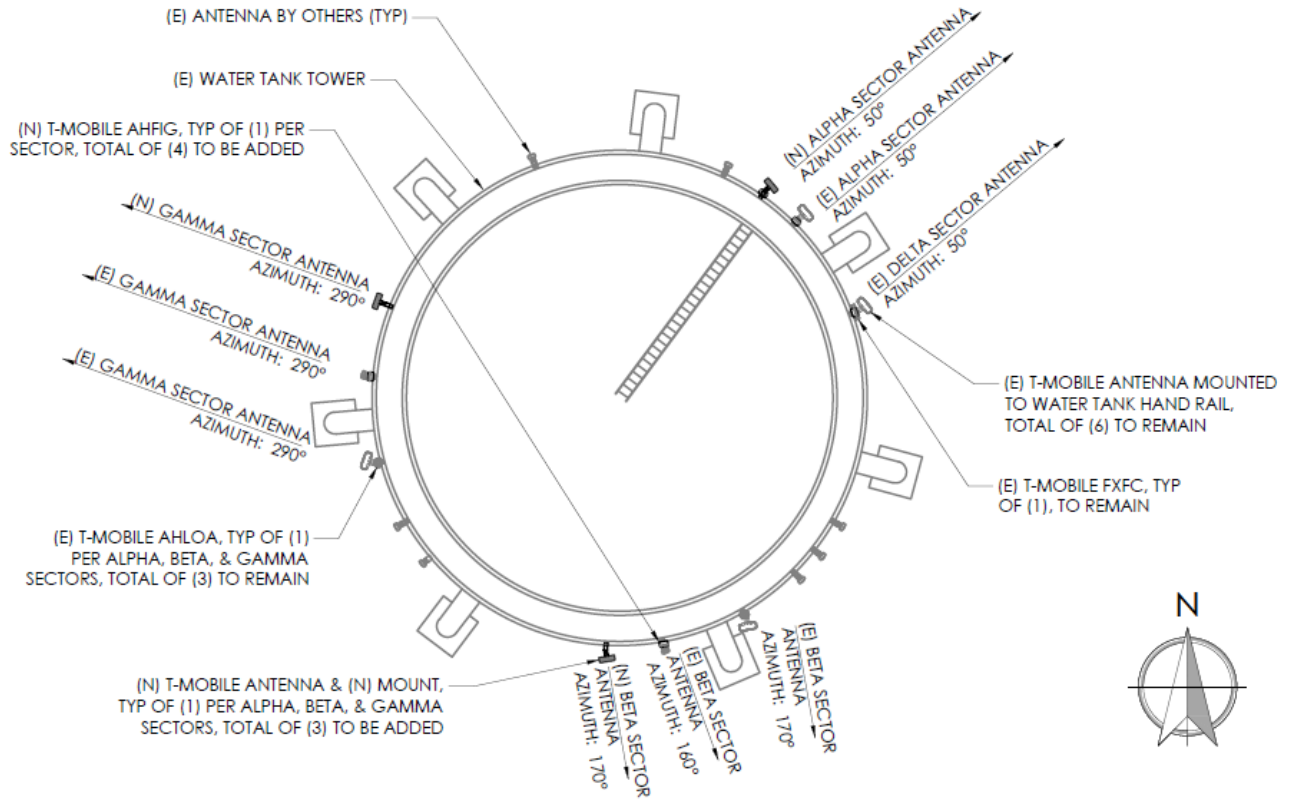


EXHIBIT C

Form of Memorandum of Agreement

This Memorandum of Agreement ("Memorandum") dated _____, 20__, evidences that a Site Lease Agreement (the "Agreement") dated _____, 20__, was made and entered into between _____ ("Landlord") and _____ ("T-Mobile" or "Tenant").

The Agreement provides in part that Landlord leases to T-Mobile a portion of certain real property owned by Landlord and located at _____, City of _____, County of _____, State of _____, as further described in the Agreement (the "Site") for the purpose of installing, operating and maintaining a communications facility and other improvements. The Site is further described in Exhibit A attached hereto.

The term of T-Mobile's lease and tenancy under the Agreement is 5 years commencing on _____, _____ ("Commencement Date"), and is subject to 3 renewal terms of 5 years each that may be exercised by Tenant.

The parties have executed this Memorandum as of the day and year first above written.

LANDLORD

[INSERT COMPLETE LANDLORD NAME(S)],

a(n) _____

By:

Name:

Title:

Address:

Contact Phone Number: _____

TENANT [INSERT TENANT ENTITY'S NAME]

a(n) _____

By:

Name:

Title:

Address:

Email Address: _____

Attach Exhibit A - Site Description

LANDLORD NOTARY BLOCK:

STATE OF OREGON)
) ss.
COUNTY OF MARION)

The foregoing instrument was acknowledged before me on this ___ day of _____, _____, by _____
_____ as the _____ of
_____.

(Print Name)
Notary Public
My appointment expires: _____

TENANT NOTARY BLOCK:

STATE OF OREGON)
) ss.
COUNTY OF MARION)

The foregoing instrument was acknowledged before me on this ___ day of _____, _____, by _____
_____ as the _____ of
_____.

(Print Name)
Notary Public
My appointment expires: _____