



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, January 12, 2021

5:30 PM

Online and via phone

Register to attend:

https://us02web.zoom.us/webinar/register/WN_p6t88Th7TPaH7E0L-Px1Wg

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION

- 2.A** [21-0051](#) Swearing In of Newly Appointed Councilmember Yén Huỳnh to City Council Position 2

3. PUBLIC COMMENT

(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)

During this portion of the meeting, citizens may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.

Individual comments are limited to two (2) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)

4. CONSENT CALENDAR

(Items of a Routine Nature)

- 4.A** [21-0021](#) Approval of December 15, 2020 City Council Meeting Minutes

Attachments: [Minutes](#)

- 4.B** [21-0008](#) Approval of December 18, 2020 City Council Special Subcommittee

Meeting Minutes

Attachments: [Minutes](#)

- 4.C [21-0018](#) Approval of December 22, 2020 Special City Council Meeting Minutes
Attachments: [Minutes](#)
- 4.D [21-0050](#) Approval of January 5, 2021 Special City Council Meeting Minutes
Attachments: [Minutes](#)
- 4.E [21-0019](#) Approval of a Labor Contract between the City of Olympia and the Olympia Police Guild
Attachments: [Contract](#)
[Economic Agreement Summary](#)
- 4.F [21-0028](#) Approval of Community Development Block Grant Program Year 2019 Annual Report Public Process
Attachments: [CDBG Webpage](#)
- 4.G [21-0007](#) Approval of a Resolution Changing Designated Plan Coordinator for City's Deferred Compensation Plan from Finance Director to Human Resources Director
Attachments: [Resolution](#)
- 4.H [21-0033](#) Approval of a Resolution Authorizing a Grant and Loan Agreement with Department of Ecology for the Purchase and Operation of a Second Street Sweeper
Attachments: [Resolution](#)
- 4.I [21-0037](#) Approval of a Resolution Declaring Olympia Bee City USA
Attachments: [Resolution](#)

4. SECOND READINGS (Ordinances)

- 4.J [20-1035](#) Approval of an Ordinance Authorizing Acceptance of a Donation by Providence Health Systems of Washington to Support Construction of Micro-Houses at the Mitigation Site
Attachments: [Ordinance](#)

4. FIRST READINGS (Ordinances)

- 4.K [20-0935](#) Approval of an Ordinance Adopting International Building Codes
Attachments: [Ordinance](#)
[Summary of Significant 2018 I-Code Changes](#)
[Washington State Energy Code Summary](#)

5. PUBLIC HEARING

- 5.A** [21-0017](#) Public Hearing on an Ordinance Granting the Renewal of a Franchise Agreement with Comcast for Use of City Rights-of-Way to Operate and Maintain a Cable Communication System
- Attachments:* [Ordinance and Agreement](#)

6. OTHER BUSINESS

- 6.A** [21-0004](#) Approval of the Eastside Street Art Crossing Concept Plan
- Attachments:* [Eastside St. Art Crossing Concept Plan Sheet](#)

7. CONTINUED PUBLIC COMMENT

(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)

8. REPORTS AND REFERRALS**8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS****8.B CITY MANAGER'S REPORT AND REFERRALS****9. ADJOURNMENT**

The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Swearing In of Newly Appointed Councilmember Yến Huỳnh to City Council Position 2

Agenda Date: 1/12/2021
Agenda Item Number: 2.A
File Number: 21-0051

Type: recognition **Version:** 1 **Status:** Recognition

Title

Swearing In of Newly Appointed Councilmember Yến Huỳnh to City Council Position 2

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Swear in newly appointed Councilmember Yến Huỳnh.

Report

Issue:

Whether to swear in newly appointed Councilmember Yến Huỳnh to City Council Position 2.

Staff Contact:

Susan Grisham, Executive Assistant, 360.753.8244



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of December 15, 2020 City Council Meeting Minutes

Agenda Date: 1/12/2021
Agenda Item Number: 4.A
File Number:21-0021

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of December 15, 2020 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, December 15, 2020

5:30 PM

Via online and phone

**Last Meeting of the Year
Register to Attend**

https://us02web.zoom.us/webinar/register/WN_wYPHMpw_RTGqWCh3F3dvdA

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION

2.A [20-1047](#) Recognition of Outgoing Mayor Pro Tem Jessica Bateman

The recognition was received.

3. PUBLIC COMMENT

The following people spoke: Hattie Osborne, Ranz Kilmer-Shoultz, Corey Gauny, Jasmine Fox-Stern and Krystafer Brown.

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)

4. CONSENT CALENDAR

4.A [20-1032](#) Approval of December 8, 2020 City Council Meeting Minutes

The minutes were adopted.

4.B [20-1036](#) Bills and Payroll Certification

The decision was adopted.

- 4.L [20-1053](#) Approval of the 2021 Ad Hoc Committee on Public Safety Work Plan

The decision was adopted.

4. SECOND READINGS (Ordinances)

- 4.C [20-0993](#) Approval of an Ordinance Amending Olympia Municipal Code Chapters 15.04, 15.08, and 15.16 Related to Impact Fees

The ordinance was adopted on second reading.

- 4.D [20-0994](#) Approval of an Ordinance Amending Olympia Municipal Code Chapter 15.20 Related to Transportation Concurrency

The ordinance was adopted on second reading.

- 4.E [20-0995](#) Approval of an Ordinance Adopting the 2021 Utility Rates and General Facilities Charges

The ordinance was adopted on second reading.

- 4.G [20-1021](#) Approval of an Ordinance Amending Ordinance 7258 (Operating, Special and Capital Budgets) - Fourth Quarter 2020

The ordinance was adopted on second reading.

- 4.H [20-1028](#) Approval of an Ordinance Amending Ordinance No. 7260 Setting the 2021 Ad Valorem Tax to Correct a Typographical Error

The ordinance was adopted on second reading.

- 4.I [20-1031](#) Approval of an Ordinance Declaring a Continuing Public Health Emergency Relating to Coronavirus (COVID-19) - First and Final Reading

The ordinance was adopted on second reading.

- 4.J [20-0991](#) Approval of an Ordinance Related to Housing Options

The ordinance was adopted on second reading.

4. FIRST READINGS (Ordinances)

- 4.K [20-1035](#) Approval of an Ordinance Authorizing Acceptance of a Donation by Providence Health Systems of Washington to Support Construction of Micro-Houses at the Mitigation Site

The ordinance was approved on first reading and moved to second reading.

Approval of the Consent Agenda

Councilmember Parshley moved, seconded by Councilmember Cooper, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

PULLED FOR SEPARATE ACTION

- 4.F [20-1020](#) Approval of an Ordinance Adopting the 2021 Operating, Special Funds and Capital Budgets, and the Capital Facilities Plan; 2021-2026 Financial Plan; Setting Forth the Estimated Revenues and Appropriations

Councilmember Parshley moved, seconded by Councilmember Cooper, to approve the ordinance on second reading.

The motion carried by the following vote:

Aye: 6 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone and Councilmember Parshley

Nay: 1 - Councilmember Rollins

5. PUBLIC HEARING - None

6. OTHER BUSINESS

- 6.A [20-1048](#) Review and Approve the Draft 2021 Legislative Agenda

Councilmembers asked to update the request for funding related to the purchase of the National Guard Armory from \$2 Million to \$3 Million.

Councilmember Cooper moved, seconded by Councilmember Parshley, to approve the 2021 Legislative Agenda as amended. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

- 6.B [20-1049](#) Approval of the 2021 City Council Retreat Agenda

Councilmember Parshley moved, seconded by Councilmember Gilman, to approve the 2021 City Council Retreat agenda. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

6.C [20-1038](#) Discussion of Vacant Council Position Recruitment

Strategic Communications Director Kellie Purce Braseth gave an update on the recruitment for the soon to be vacant City Council position #2.

The discussion was completed.

6.D [20-1037](#) 2020 Year-End Highlights

The information was received.

7. CONTINUED PUBLIC COMMENT

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Councilmembers reported on meetings and event attended.

8.B CITY MANAGER'S REPORT AND REFERRALS

City Manager Jay Burney presented the Council with small tokens of thanks for their work during the year.

9. EXECUTIVE SESSION

9.A [20-1050](#) Executive Session Pursuant to RCW 42.30.110(1)(h) - Evaluate the Qualifications of Candidate for Appointment to Elective Office

The executive session was not held.

9. ADJOURNMENT

The meeting adjourned at 7:30 p.m.



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601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of December 18, 2020 City Council Special Subcommittee Meeting Minutes

Agenda Date: 1/12/2021
Agenda Item Number: 4.B
File Number:21-0008

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of December 18, 2020 City Council Special Subcommittee Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Friday, December 18, 2020

9:00 AM

Online and via phone

Special Subcommittee to Evaluate Applications for Council Position 2

Attend: [https://us02web.zoom.us/j/88132736472?](https://us02web.zoom.us/j/88132736472?pwd=aGpINkdGc2YvejDub1R4cjVwcTg2dz09)

[pwd=aGpINkdGc2YvejDub1R4cjVwcTg2dz09](https://us02web.zoom.us/j/88132736472?pwd=aGpINkdGc2YvejDub1R4cjVwcTg2dz09)

1. ROLL CALL

Present: 3 - Mayor Cheryl Selby, Councilmember Jim Cooper and Councilmember Dani Madrone

2. BUSINESS ITEM

2.A [20-1057](#) Consideration of Council Position Vacancy Applications

Councilmember Cooper moved, seconded by Councilmember Madrone, to forward a recommendation to the full City Council to interview Kento Azegami, Tracey Carlos, Holly Davies, Yen Huynh, Robbi Kesler, Dontae Payne and Maria Siguenza for the soon to be vacant City Council Position 2.

Aye: 3 - Mayor Selby, Councilmember Cooper and Councilmember Madrone

3. EXECUTIVE SESSION - IF NEEDED

3.A [20-1058](#) Executive Session Pursuant to RCW 42.30.110(1)(h) - Evaluate the Qualifications of Candidate for Appointment to Elective Office

The Executive Session was not held.

4. ADJOURNMENT

The meeting adjourned at 9:22 a.m.



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601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of December 22, 2020 Special City Council Meeting Minutes

Agenda Date: 1/12/2021
Agenda Item Number: 4.C
File Number:21-0018

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of December 22, 2020 Special City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, December 22, 2020

12:00 PM

Online and via Zoom

Special Meeting

Attend: [https://us02web.zoom.us/j/86502200863?](https://us02web.zoom.us/j/86502200863?pwd=OWdxdXI4NWFPOTFFc1RQc2VNR2dUQT09)
[pwd=OWdxdXI4NWFPOTFFc1RQc2VNR2dUQT09](https://us02web.zoom.us/j/86502200863?pwd=OWdxdXI4NWFPOTFFc1RQc2VNR2dUQT09)

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

Excused: 1 - Mayor Pro Tem Jessica Bateman

2. BUSINESS ITEM

- 2.A [20-1059](#) Approval of Applicants to Interview for the Upcoming Open City Council Seat

Councilmember Coopered moved, seconded by Councilmember Parshley to approve interviewing the following applicants for the upcoming City Council Position 2 vacancy; Kento Azegami, Tracey Carlos, Holly Davies, Yen Huynh, Robbi Kesler, Dontae Payne, and Maria Siguenza.

Aye: 6 - Mayor Selby, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

Excused: 1 - Mayor Pro Tem Bateman

3. EXECUTIVE SESSION - IF NEEDED

- 3.A [20-1060](#) Executive Session Pursuant to RCW 42.30.110(1)(h) - Evaluate the Qualifications of Candidate for Appointment to Elective Office

The executive session was not held.

4. ADJOURNMENT

The meeting adjourned at 12:06 p.m.



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of January 5, 2021 Special City Council Meeting Minutes

Agenda Date: 1/12/2021
Agenda Item Number: 4.D
File Number:21-0050

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of January 5, 2021 Special City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, January 5, 2021

5:30 PM

Online and via phone

Special Meeting

Attend: <https://us02web.zoom.us/j/84342197591>

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

1.A ANNOUNCEMENTS

2. BUSINESS ITEMS

- 2.A [21-0030](#) Overview and Approval of Ranked Choice Voting Process for the Purpose of Appointing a Councilmember to Fill the Unexpired Term of Position 2

Councilmember Parshley moved, seconded by Councilmember Gilman, to accept the ranked choice voting process as outlined and written on the ballots, as well as the process of submitting and counting the ballots. The motion carried by the following vote:

Aye: 6 - Mayor Selby, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

- 2.B [21-0022](#) Interview Candidates, Conduct a Ranked Choice Voting Process and Appoint a Councilmember to Fill the Unexpired Term of Position 2

Councilmember Parshley moved, seconded by Councilmember Cooper, to accept of results of the ranked choice voting process and appoint Yên Huỳnh to City Council Position 2 . The motion carried by the following vote:

Aye: 6 - Mayor Selby, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

EXECUTIVE SESSION

- 2.C [21-0035](#) Executive Session Pursuant to RCW 42.30.110(1)(h) - Evaluate the

Qualifications of a Candidate for Appointment to Elective Office

Mayor Selby recessed the meeting at 8:45 p.m. She asked the Council to reconvene in five minutes for an Executive Session Pursuant to RCW 42.30.110(1)(h) related to evaluating the qualifications of a candidate for appointment to elective office. She announced no decisions would be made, the meeting was expected to last no longer than 30 minutes, Mayor Selby reconvened the meeting at 9:10 p.m. The City Attorney was present at the Executive Session.

The executive session was held and no decisions were made.

3. ADJOURNMENT

The meeting adjourned at 9:41 p.m.



City Council

Approval of a Labor Contract between the City of Olympia and the Olympia Police Guild

Agenda Date: 1/12/2021
Agenda Item Number: 4.E
File Number:21-0019

Type: contract **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Labor Contract between the City of Olympia and the Olympia Police Guild

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the labor agreements with the Olympia Police Guild and authorize the City Manager to execute the agreements.

Report

Issue:

Whether to approve the labor contracts between the City of Olympia and the Olympia Police Guild.

Staff Contact:

Linnaea Jablonski, Human Resources Director, General Government, 360.753.8309

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The labor agreements with the Olympia Police Guild expired on December 31, 2019. The contracts cover sixty (60) Police Officers in the City's Police Department. The new agreement has been ratified by the Union and City staff is now bringing it forward for approval.

The new proposed contract for Council consideration is attached.

The contract has two-year terms that will expire on December 31, 2021. Significant changes to the contracts are in the areas of wages.

Wages

Wage increases for these contracts will be based on 90% of CPI-U with a 1% minimum and a 4% maximum wage increase. Adding 3.3% incentive pay for neighborhood policing and walking patrol

units. Increasing the incentive pay for detectives from 3.3% to 4%.

Medical/Dental/Vision Benefits

All medical/dental/vision benefits remain the same as administered through Association of Washington Cities. Life insurance coverage for members increased from \$50,000 to \$150,000

Janus

Language was added to clarify that membership to the Union is no longer a condition of employment based on the Janus vs. AFSCME ruling.

Washington Paid Family and Medical Leave (PFML)

Members will continue to pay into the new WA PFML program that is administered through the Employment Security Department.

The remainder of the contract changes is general and/or matching language clean-up items to include gender neutral language or added language based on operational or management needs.

Neighborhood/Community Interests (if known):

N/A

Options:

1. Move to approve the labor agreements with the Olympia Police Guild and authorize the City Manager to execute the agreements.
2. Do not approve the labor agreements with the Olympia as proposed and direct staff as to next steps.
3. Move to approve the labor agreements with the Olympia Police Guild as amended by Council and authorize the City Manager to execute the agreements.

Financial Impact:

The cost to the City for implementing this contract in 2020 is \$189,818, which is equal to what was already included in the 2020 Operating Budget. A summary of the economic agreements is attached.

Attachments:

Contract
Economic Agreement Summary

**AGREEMENT BETWEEN
THE CITY OF OLYMPIA
AND
THE OLYMPIA POLICE GUILD**

For the period: January 1, 2020 – December 31, 2021

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AGREEMENT BETWEEN
THE CITY OF OLYMPIA, WASHINGTON
And
THE OLYMPIA POLICE GUILD

Preamble

- A. This contract is made and entered into at Olympia by the City of Olympia, Washington, hereinafter referred to as the “City” and the Olympia Police Guild, hereinafter referred to as the “Guild”.
- B. The purpose of this document is to set forth and record herein the basic and full agreement between the parties on those matters pertaining to wages, hours, and conditions of employment.

ARTICLE 1 - GENERAL

- A. The Guild hereby and herewith covenants, agrees, and represents to the City that the Guild is duly authorized and empowered to contract for and on behalf of all employees in the bargaining unit and represents that it and its members will faithfully and diligently abide by and be strictly bound to all of the provisions of this Contract as herein set forth. The parties agree that in conferences and negotiations, the Guild will represent all employees in the bargaining unit.
- B. The City hereby and herewith covenants, agrees, and represents to the Guild that the City under the express limitations of this Agreement is duly authorized and empowered to contract for and on behalf of the City and for itself represents that it will faithfully and diligently abide by and strictly be bound to all of the provisions of this Contract as herein set forth.
- C. The parties are committed to a relationship of openness and communication and recognize the importance of collaboratively resolving issues in the Department. The parties recognize the importance of working together cooperatively in jointly seeking to improve the Department.

ARTICLE 2 - RECOGNITION

The City recognizes the Guild as the sole and exclusive bargaining representative for all commissioned officers of the City of Olympia excluding supervisory officers of the rank of sergeant and above, confidential, and all other employees for the purpose of representation and collective bargaining with regard to matters pertaining to wages, hours, and conditions of employment. Any agreements or MOUs made between the Guild and the City shall be signed by the Guild President or designee and one other elected Guild Officer. The Employer agrees to notify the Guild not less than 30 days in advance of changes or public hearings affecting working conditions of any employee covered by this Agreement, except in emergency situations and provided that the Employer is aware of the changes or public hearings.

ARTICLE 3 - EMPLOYEE RIGHTS

Employees subject to this Agreement shall have the right of self-organization, to form or join labor organizations, and to bargain collectively through representatives of their own choosing.

ARTICLE 4 - MANAGEMENT RIGHTS

The Guild recognizes the prerogative of the City to manage or administer the Police Department in accordance with its responsibilities, powers, and authority, subject to other provisions of this Agreement. City prerogatives include, but are not limited to, the following items:

1. The right to establish reasonable rules and regulations;
2. The right to determine methods of operating and the introduction of new equipment;
3. The right to discipline, discharge, or suspend employees for cause;
4. The right to determine schedules of work and to establish the methods and processes by which work is to be performed;
5. The right to schedule overtime work and;
6. The right to take any action as may be necessary to carry out the mission of the City and the Department in situations of civil emergency as declared by the Emergency Management Director, Mayor, Governor, or President of the United States.

ARTICLE 5 - STRIKES PROHIBITED

A. The Guild and its members, as individuals or as a group, will not initiate, cause, permit, or participate or join in any strike, work stoppage or slowdown, or any other restriction of work at any location in the City. Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established in the City by the Guild or any other labor organization when called upon to cross such picket line in the line of duty. Disciplinary action, including discharge, may be taken by the City against any employee or employees engaged in a violation of this Article. Such disciplinary action may be undertaken at the option of the City (provided that a challenge to the discipline is subject to the grievance and arbitration provisions of this Agreement) and shall not preclude or restrict recourse to any other remedies, including an action for damages, which may be available to the City.

B. In the event of a strike, work stoppage, slow-down, observance of a picket line or other restriction of work in any form, either on the basis of individual choice or collective employee conduct, the Guild will, within one hour of notification by the City, attempt to secure an orderly return-to work within two hours of such notification. This obligation and the obligations set forth in Section A above shall not be affected or limited by the subject matter involved in the dispute giving rise to the stoppage or by whether such subject matter is or is not subject to the grievance and arbitration provisions of this Agreement.

ARTICLE 6 - GUILD ACTIVITIES

A. The Guild's president or grievance committee chair may briefly discuss grievances or potential grievances with Guild members on City time provided that they shall make arrangements to meet with the grievant on off-duty time to discuss the matters in detail. Official representatives of the Guild shall be given time off with pay to attend meetings with City representatives including but not limited to

meetings concerning grievances. Guild representatives shall provide the City forty-eight (48) hours notice of the need to attend such meetings whenever reasonably possible. A maximum of three Guild representatives (no more than two from road patrol) shall be released with pay to attend bargaining negotiations with the City. The parties will work together to minimize the impact of negotiations on departmental operations, and the Guild will work with the City to ensure that no more than two officers must be hired back on overtime. The Police Chief or designee shall grant an employee who is also a Guild Representative reasonable release time on duty (with pay) for the purposes of handling grievances and other legitimate Guild business relating to the Guild's function as a collective bargaining representative, provided that such release time does not unreasonably interfere with the work and duties of the employees or of the other on-duty employees. Normally such release time extends to one employee at a time. Activities, which are brief or intermittent in nature, do not require notice to the supervisor. The Police Chief or designee shall grant an employee who is also a Guild Representative reasonable release time on duty (with pay) for the purposes of attending Civil Service Meetings.

B. Bulletin Board Space

1. The City shall provide bulletin board space on a wall for Guild use in each of the buildings where police officers work. The location in each building shall be in a place where all of the members of the Guild have routine access, where members spend a majority of their time in the building, and is generally not where unescorted members of the public are routinely allowed access. Material posted thereon shall be the responsibility of the Guild and shall relate only to Guild meetings, elections, social events, reports of committees and Guild Board of Directors.
2. No notices shall be posted in or around the City property except on the assigned bulletin board space. No Guild notice shall be posted until it shall have been signed by the President, Vice President, Negotiations Chair, or Secretary of the Guild.

C. The City shall provide office space for a Guild filing cabinet, in a secure area of the Police Department where a majority of Guild members work.

D. The Guild agrees that its officers, agents, affiliated organizations, and members of the bargaining unit will not solicit merchants, businesses, residents, or citizens located within the City of Olympia for contributions, donations, or to purchase tickets for any Guild-sponsored performance or advertising in any Guild or Guild-related publication or associate memberships in the Guild or any Guild-related organization without thirty (30) days prior written notice to the City Manager. Such notice shall include the dates such activity shall begin and end, the entities involved in such fundraising, and the methods to be employed in the specific campaign.

E. Within thirty (30) days of hire or transfer into the bargaining unit, each employee shall attend a one-hour orientation session with a designated Guild representative. The purpose of the orientation is for the Guild to provide information related to coverage under this CBA and enrollment in Guild membership. The Employer and the Guild agree that employees covered under this Agreement hired on or after its effective date shall, on the thirty-first (31st) day following the beginning of such employment, make an election whether or not to become a member of the Guild in good standing.

2.

F. The Employer will provide a quarterly report to the Guild transmitted with transfer of deducted dues owed to the Guild ("the transferred amount"). Such report shall indicate: 1) all individuals who had dues withheld as part of the transferred amount, and the amount withheld and transmitted on behalf of that individual.;

G. Payroll Deduction - Upon the written authorization from an employee within the bargaining unit, the Employer shall deduct from the pay of such employee the monthly amount of dues as certified by the secretary of the Guild and shall transmit the same to treasurer of the Guild. Any employee who has submitted written authorization but thereafter seeks to discontinue such payment may do so effective sixty (60) days of a written request to discontinue such withdraw..

ARTICLE 7 - GRIEVANCE PROCEDURE

A. The purpose of this procedure is to provide for an orderly method for resolving grievances. A determined effort shall be made to settle any such differences at the lowest possible level in the grievance procedures, and there shall be no suspension of work or interference with the operations of the Department. Meetings or discussions involving grievances or these procedures shall occur outside of regular working hours unless otherwise mutually agreed.

B. For the purpose of this Agreement, a grievance is defined as only those disputes involving the interpretation, application, or alleged violation of any provision of this Agreement and other written Agreements between the City and the Guild.

C. Steps in the grievance procedure

Step 1. The grievant employee or the Guild shall present the grievance within fourteen (14) calendar days of its alleged occurrence to the Division Commander, who shall attempt to resolve it and shall respond to the grievance within seven (7) calendar days after receipt of the grievance.

Step 2. If the grievant employee or the Guild is not satisfied with the solution of the Division Commander, the employee or Guild shall submit written notice to the Chief of Police or designee, and a copy to the Guild including: (1) statement of the grievance and relevant facts, (2) specific provision(s) of the contract violated, (3) remedy sought, and (4) reasons for dissatisfaction with the Division Commander's solution within ten (10) calendar days of the date of the Division Commander's response. The Chief of Police or designee shall attempt to resolve the grievance within fourteen (14) calendar days after receipt of the grievance.

Step 3. If, after seven (7) calendar days from the date of the Chief's response, the grievance remains unresolved, the written grievance as set forth in Step 2 may be presented to the City Manager or designee who shall respond to the grievance in writing within twenty-one (21) calendar days from the date of receipt, with a copy to the Guild.

Step 4. If, after thirty (30) calendar days from the date of the City Manager's response, the grievance remains unresolved, the grievance as set forth in writing in Step 2 may be submitted to an arbitrator at the discretion of the Guild, in accordance with the following procedures:

a. A Guild Representative and the City Manager or designee shall communicate within seven (7) calendar days after notice of arbitration has been given to select an arbitrator. If the parties mutually agree, they may choose a mediator prior to submission to arbitration. The mediator may be selected by mutual agreement. Nothing said or done by the mediator or any party in the mediation or settlement discussions may be referenced or introduced into evidence at the arbitration hearing. If mediation does not result in a settlement, the parties may proceed to arbitration as provided in this Article. If the parties are unable to agree upon an arbitrator, they shall jointly request the Federal Mediation and Conciliation Service to provide a list of seven (7) names and the parties shall alternately strike one name from the list until only one name remains. A coin toss shall determine the party striking the first name. The one name remaining shall be the arbitrator.

b. It shall be the function of the arbitrator to hold a hearing at which the parties may submit their cases concerning the grievance. The hearing shall be kept private, and shall include only such parties in interest and/or designated representatives. The arbitrator shall render a decision within thirty (30) calendar days after such hearing. The power of the arbitrator shall have no authority to alter, modify, vacate or amend any terms of this Agreement. The decision of the arbitrator within these stated limits shall be final and binding upon the parties to the grievance provided the decision does not involve action by the City which is beyond its jurisdiction. Neither the arbitrator nor any other person or persons involved in the grievance procedure shall have the power to negotiate new agreements or to change any of the present provision of this Agreement.

c. The fees and expenses of the arbitrator shall be paid equally by both parties. However, each party shall be completely responsible for all costs of preparing and presenting its own case, including compensating its own legal representatives, attorneys, and expert witnesses. If either party desires a record of the proceedings, it shall solely bear the cost of such record.

d. In case of a grievance involving any continuing or other money claim against the City, no award shall be made by the arbitrator which shall allow any alleged accruals prior to thirty (30) days prior to the date when such grievance shall have first been presented.

e. In the event the arbitrator finds that he has no authority or power to rule in the case, the matter shall be referred back to the parties without decision or recommendation on the merits of the case.

D. In the case of disciplinary actions appealable to the Civil Service Commission and grievable under the terms of this contract, a written election of the remedies shall be made after the receipt of the Step 3 response. An employee may elect to either pursue an appeal to the Civil Service Commission or continue with the contractual grievance procedure, but not both. If mutually agreed, time limits will be extended to complete a reasonable investigation before the election of remedies is made.

E. Any and all time limits specified in the grievance procedure may be waived by mutual agreement of the parties. Failure of the employee to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of that specific grievance.

ARTICLE 8 - OUTSIDE EMPLOYMENT

Permission to work at outside employment while an employee of the City must be approved in advance, in writing, by the Chief of police or designee. Outside employment will be approved, if the following five conditions are met:

1. Be compatible with the employee's City duties.
2. In no way detract from the efficiency of the employee in City duties.
3. In no way be a discredit to the City or the Police Service.
4. Not take preference over extra duty required by City employment.
5. Not involve the use of Department uniforms or equipment unless authorized in writing by the Chief of Police or designee.

It is understood that the Chief of Police or designee, after conferring with the officer and allowing a reasonable amount of time to resolve any conflict with the above criteria, may upon reasonable grounds revoke or restrict permission to hold outside employment.

ARTICLE 9 - SALARIES

A. Basic Salaries:

Effective January 1, 2020 and January 1, 2021: Employees will receive a salary increase of 90% of Seattle-CPI-U (based on July 1 – June 30 CPI-U figures from the prior year) with a minimum increase of 1% and a maximum increase of 4%. Basic salaries for employees in the bargaining unit shall be in accordance with the schedule set forth in Appendix A.

Basic salaries for employees in the bargaining unit shall be in accordance with the schedule set forth in Appendix A. Police recruit salaries shall be at Police Recruit Step A, until the recruit successfully completes the Basic Law Enforcement Academy. Recruits, who have successfully completed the Academy, and lateral entry police officers, shall receive salaries Police Recruit Step B, until they are released from the Field Training Program. Officers who have successfully completed the Field Training Program shall advance to Police Officer Step A. Thereafter, a police officer shall be eligible for annual merit step increases up to Police Officer Step E. No such step increase shall be denied employees who have met acceptable performance standards.

At the discretion of the Police Chief, the initial pay step for a lateral entry police officer may be placed between Recruit Step B and Officer Step C, depending on experience. After successful completion of the Field Training Program, the lateral entry officer shall advance to the next step in the same manner as other employees of the bargaining unit.

All regular paychecks will be directly deposited to the bank account of the employee's choice.

The City shall contribute additional pay, equal to seven point five percent (7.5%) of the employee's basic salary to the employee's deferred compensation account and will be considered as part of the employee's basic salary for services rendered.

B. Special Pay:

Premium pay at the amount indicated shall be given to the positions shown below. These positions are not permanent ranks but rather are provisional appointments made at the origination and termination of the Chief of Police.

1. Employees assigned to the Investigative Division as Detective Officers shall receive premium pay in the amount of 4.0% of the officer's base pay per month.
2. Motorcycle Officers shall receive premium pay in the amount of 3.3% of the officer's base pay per month. Any Officer who is not a Motorcycle Officer or is not assigned to the Traffic Unit (Bureau), but is assigned to investigate a serious injury or fatality accident shall receive a three point three percent (3.3%) hourly pay premium for the entire shift for those days when any such investigative duties are performed by the employee. The premium shall also be calculated into overtime at the rate of one and one-half (1.5) times the regular rate when traffic investigative duties are performed on overtime.
3. A premium pay in the amount of 3.3% shall be paid for shifts when non-traffic unit Officers are required to use a motorcycle.
4. Special Weapons and Tactics (SWAT) team member including hostage negotiators shall receive premium pay in the amount of 3.3% of the officer's base pay per month. This pay shall be in addition to any other specialty or premium pay that the employees may receive.
5. Employees assigned to the Canine Unit (K-9 duties) shall receive premium pay in the amount of three point three percent (3.3%) of the employee's base salary paid each month.

Hours of work for designated canine officers shall include:

- a. Three one-hour training shifts per workweek.
- b. The regular shift for canine officers shall be reduced by one hour per workday, based on the existing schedule.
- c. When a canine officer is on sick leave, compensatory time off, or vacation leave, and continues to provide care for the police canine, the officer's leave bank will be charged in accordance with paragraph "b".
- d. When a canine officer is on sick leave, compensatory time off, or vacation leave and the canine is boarded at a kennel at the city's expense, the canine officer's shift will not be reduced and the leave bank will be used accordingly.

6. Employees assigned to field training officer (FTO) duties shall receive premium pay in the amount of five percent (5.0%) of the officer's base pay rate.

a. Employees performing any FTO/PTO Duties for all of the regularly scheduled workdays in their semi-monthly pay period shall receive premium pay of 5% of their base pay rate in addition to their normal wages for the pay period.

b. Employees who do not perform FTO/PTO Duties on all of the regularly scheduled workdays of the semi-monthly pay period shall receive a five percent (5%) hourly pay premium for the entire shift for those days when any FTO/PTO duties are performed by the employee. The premium shall also be calculated into the overtime at the rate of one and one-half (1.5) times the regular rate when FTO/PTO duties are performed on overtime.

7. Employees assigned to Academy instructional duties or TAC Officer duties at the Washington State Criminal Justice Training Commission (CJTC) shall receive special pay in the amount of three percent (3%) of the officer's base pay for those months so assigned as long as it does not exceed the reimbursable amount from CJTC. These officers shall also receive FTO or PTO pay during those months assigned and they shall receive an additional seven percent (7%) premium pay for travel expenses as long as it does not exceed the reimbursable amount from CJTC.

8. Employees serving as Firearms Instructors, Defensive Tactics (DT) Instructors (also includes Taser Instructor), Less Lethal Instructors, Emergency Vehicle Operator Course (EVOC) Instructors, Drug Recognition Experts (DRE), or First Aid-CPR-BBP Instructors are generally required to participate in higher levels of training, design lesson plans, provide additional courtroom testimony, and may incur additional liability. These officers shall receive premium pay in the amount equal to one percent (1%) of their base pay each month

9. Officers assigned as School Resource Officers (SRO), Neighborhood Police and Downtown Walking Patrol shall receive premium pay in an amount equal to three point three percent (3.3%) of the officer's base wage.

C. Out of Classification: An employee designated by the Chief of Police as acting-in-capacity in a higher position than their permanent classification shall immediately receive pay in that position's salary range at the first step of that position that represents a minimum of eight percent (8%) increase over current pay, including any special pay.

D. Educational Incentive and Premium Pay: Each officer who has or who is awarded either an Associate's Degree or Bachelor's Degree from an accredited institution of higher education shall receive premium pay in accordance with the schedule set forth in Appendix "A". Officers who have earned 90-quarter credits or 60-semester credits from an accredited institution of higher education shall receive the educational incentive and premium pay the same as an officer who has an Associates Degree. Officers who have earned a Master's Degree from an accredited institution of higher education shall receive premium pay in accordance with the schedule set forth in Appendix "A". The incentive and premium pay for each degree shall not be cumulative.

1. Eligibility

a. Officers with no fulltime police experience prior to the Olympia Police Department will not be eligible for educational incentive or premium pay until two (2) years from their date of hire.

b. In the case of officers who have had police experience other than with the Olympia Police Department, they would receive educational incentive pay upon the successful completion of the Department approved training program (PTO/FTO).

2. Time spent in pursuit of educational incentive pay is considered off-duty, personal time.

E. All employees covered by this Agreement shall receive longevity pay each month in accordance with the longevity schedule in appendix A, based on the established percentages of the employee's base pay. The schedule reflects the year of service the employee is currently in; not the year of service completed.

F. Bilingual Pay: Employees shall receive a bilingual pay allowance of three point three percent (3.3%) added to their base pay when language skills have been confirmed by an agreed upon language specialist or such other method as the City shall reasonably determine. Bilingual pay for officers having conversational proficiency in Spanish, Asian, Pacific Islander, Russian, Slavic and Sign Languages can qualify for this incentive. Recertification of language skills must be made every three years within three months following the anniversary date of the certification. Those failing to recertify will lose the premium the first pay period following the 3-month certification time period.

ARTICLE 10 - HOURS OF WORK

A. The regular workday shall be ten hours and 40 minutes for uniformed officers working Patrol duty..

B. The average weekly hours of duty in any year shall not exceed an average of forty (40) hours.

C. Any changes in the length of the workday or the workweek during the life of this Agreement will only be made by mutual agreement. The Guild and the City agree to meet periodically to examine what changes, if any, should be made to the present schedule. School Resource Officers normally work an 8-hour shift with donning and doffing time included in these hours.

D. Officers are expected to be at work on time and not leave until the end of their shift. Regularly scheduled duty hours are still 10 hours and 40 minutes for uniformed officers, except for School Resource Officers. School Resource Officers normally work an 8-hour shift.

E. The parties agree that annually the Guild shall bid on four separate three-month shifts (January through March, April through June, July through September, and October through December). Shift bidding will be done by seniority.

Probationary officers will not have the benefit of bidding their shifts. Their shifts will be assigned by the Patrol Lieutenant. The determination of shift assignments will be balanced with the best professional development interest of the employee and the overall needs of the department.

The bidding for the next year will be conducted in October or November of the previous year.

The Guild shall continue to conduct the annual shift bidding for each quarter; however, the Police Department Administration shall schedule at least two weeks in advance, the work schedule for any employee changing Patrol Teams at the start of each year, and the scheduling will be consistent with the employee's shift bid. Adjustments to the employee's work schedule for team changes shall occur after Christmas day and be completed within 14 days of the first change in the employee's regular schedule.

Officers changing from one patrol team to the other shall not work more than 15 days in any 28-day period and shall not work more than five consecutive days without one or more days off, excluding any overtime assignments. Officers changing between a specialty assignment and patrol assignment shall not be required to work more than five consecutive days without one or more days off and shall work an average of 40 hours per week when averaged over any 28-day period, excluding any overtime assignments.

The Department retains the right to move an officer to a different shift when it has reasonable cause to do so. If the City changes the work schedule of any employee the City shall give notice to the effected employee at least fourteen (14) days in advance. If notice to change a work schedule is given with less than 14 days' notice, the employee shall have the option of working the original hours of scheduled work and working any additional hours to accommodate the change at the overtime rate of pay. While the City has concerns about officers working graveyard on an extended basis and about the inability of officers to follow their supervisors to another shift, it has agreed to see how the above procedure works. The Guild recognizes that the City explicitly retains the right to raise these issues in further negotiations.

F. The City may adjust the starting time for employees on the patrol schedule for any shift up to two (2) hours, provided that such adjustments are only for short-term projects which shall last no longer than two (2) weeks, shall be only by mutual agreement between the employee and the supervisor, and further provided shall not be used for the purpose of covering shift staffing shortages.

G. For purposes of patrol shifts on duty during the change to Daylight Savings and back to Standard Time, the shift will begin one (1) hour earlier in the Spring and one (1) hour later in the Fall.

H. Minimum staffing levels for Patrol Officers and regular hours of work for Patrol Officers will remain as described in the Memorandum of Understanding of December 14, 2009. This shall not prohibit the City from staffing Patrol with numbers of officers larger than the minimum.

ARTICLE 11 - OVERTIME AND CALL BACK

A. Overtime: Overtime shall be defined as authorized work for the City performed in excess of the regular workday. All overtime shall be compensated at the rate of time and one-half the regular rate of pay. Compensation for overtime shall take the form of cash or compensatory time, at the employee's option, except that compensatory time off accumulated shall not exceed one hundred seven (107) hours per employee. Upon the accumulation of one hundred and seven (107) hours of compensatory time, all overtime shall take the form of cash until an employee's accumulation is less than one hundred and seven (107) hours, at which time the employee may again accumulate compensatory time subject to the one hundred and seven (107) hour maximum stated above. Granting of scheduled compensatory time will be limited to two employees per shift, with the following guidelines:

- First compensatory time off request
 - Requests made ten days in advanced will be granted
 - Requests made less than ten days in advance will be granted provided the employee has made arrangements for a replacement officer
- Second compensatory time off request
 - Request will be granted provided the employee has made arrangements for a replacement officer that is not otherwise scheduled to work that calendar day

Additionally, an officer can request compensatory time off if compelling circumstances exist, which would be approved on a case-by-case basis. Only one Officer on each shift shall normally be allowed to take compensatory time off during May Day (May 1st) and the five days of Lakefair (in July) each year. However, additional compensatory time off can be approved at the discretion of the supervisor.

If sixteen (16) or more hours are worked within a twenty-four (24) hour period, each additional hour beginning with the seventeenth (17th) hour shall be compensated at double time.

Effective upon signing of this agreement, compensatory time credited toward final average salary for the purposes of reporting to the Washington State Department of Retirement Systems (DRS) will be limited to compensatory time earned in the last year of employment.

B. Call Back: The City agrees to pay a minimum of three (3) hours overtime at time and one-half the regular rate of pay to employees called back to work after having left work unless the time extends to the officer's regular work shift or the employee is called back to rectify their own error which requires immediate correction.

C. Phone Calls: Employees who are off-duty and receive a phone call from a ranking member of the City, or from a person acting at the discretion of a ranking employee of the City, or anyone employed by the Prosecuting Attorney's Office, or any Court, shall receive overtime pay as follows:

1. Officers working Day Shift or Swing Shift shall receive pay for the actual length of the call, with a minimum of thirty (30) minutes of overtime pay.
2. Officers working the Graveyard Shift (also known as the Night Shift) shall receive pay for the actual length of the call, with a minimum of sixty (60) minutes of overtime pay.
3. If the employee receives multiple phone calls, the employee will not be paid twice for the same period of time. For example, if the employee receives two phone calls that are each five (5) minutes long and are received fifteen (15) minutes apart, the employee would receive the thirty (30) minute or sixty (60) minute minimum, because they are within the same thirty (30) minute period. If the employee received one phone call for ten (10) minutes and a second phone call was received three hours later, the employee will receive the minimum overtime pay (thirty (30) minutes or sixty (60) minutes) for each call.
4. Employees shall not receive overtime pay if the phone call is to correct the employee's own mistake.
5. Employees shall not receive overtime pay if the purpose of the call is to ask the employee if they want to work voluntary overtime assignments.

D. Standby Time: If the City determines there is a need to place employees on stand-by for an event or occasion, the City will post the date(s) and times employees are needed for stand-by duty. The City will first seek eligible employees who voluntarily agreed to be on stand-by assignments. All employees assigned to stand-by duty, who request one, will be given a cellular telephone in good working order for the purpose of calling the employee into work or terminating the stand-by assignment. Employees on stand-by duty will not be confined to a particular location and may leave their residence with the cellular telephone, so long as they can respond to the Police Department main station with their duty uniforms and equipment within sixty (60) minutes of being called by telephone or . An employee assigned to stand-by duty shall receive a rate of pay equal to the prevailing minimum wage described by law.

E. Waiver of Overtime for Mutual Shift Exchanges: As the mutual exchange of shifts is solely for the convenience of employees, no overtime shall be paid to an employee who voluntarily trades shift time which exceeds the normal workday by virtue of such trade. Time worked beyond the normal traded shift shall be compensated as in Paragraph A.

F. Whenever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the applicable rates shall apply.

G. Fatigue Management. Police Officers on the 10 hour 40 minute schedule will not work more than 16 consecutive hours, including extra duty, in a 24-hour period. Employees on the 10 hour 40 minute schedule will have a minimum of 8 consecutive hours off duty in every 24-hour period. This does not apply to off-duty employment.

Exceptions may be made due to exigent or emergency situations. The shift supervisor responsible for the overtime period shall approve such exceptions. Examples of exigent overtime include but are not limited to: necessary report completion, SWAT callouts, major ongoing investigations such as homicides, robbery, rape, abducted or missing children, court appearances. Minimum staffing and other pre-scheduled special events do not constitute exigent or emergency circumstances.

Off-Duty Employment is voluntary extra Department-related work, approved, scheduled, and paid by the City, but is funded by a source other than the City. Officers working off-duty employment shall be compensated by overtime pay and not compensatory time.

ARTICLE 12 - COURT APPEARANCES

A. Employees, on off-duty time or on vacation, who are subpoenaed to give testimony in court about events arising out of their employment shall be paid or compensated as follows: Time and one-half the regular rate of pay with a minimum of three (3) hours, except that those employees appearing for less than one hour immediately before or after their shift shall be paid a minimum of one (1) hour.

B. Employees subpoenaed to give testimony shall be entitled to the hourly minimum if notification of cancellation is not received by 5:00 p.m. the calendar day prior to the scheduled court appearance, unless the cancellation occurs while the employee is on duty and is so notified. Employees who are off-duty and are under subpoena to give testimony, and have not received notification of cancellation or a

change in date or time of the testimony or appearance, prior to 5:00 PM the calendar day prior to the scheduled court appearance, shall receive time and one half the regular rate of pay starting from the date and time posted on the subpoena, or an earlier time if requested by the prosecutor, until released for the day.

C. All monies received for such services as a witness shall be surrendered to the City, except in those cases where the employee is not compensated for such an appearance by the City.

ARTICLE 13 - ANNUAL LEAVE

This Article applies to all employees, except those LEOFF I employees who elect to remain with the benefit plan as provided under Article 13 - 1.

A. Annual Scheduled Leave

1. Employees shall accrue annual leave in accordance with the schedule set forth in Appendix B.
2. Annual leave shall be accrued monthly in accordance with the schedule in Appendix B, except that leave accrued during the first twelve (12) months of continuous service may not be taken until the employee completes the first twelve (12) months of continuous satisfactory service. Such earned leave may be used for unscheduled leave according to Paragraph B.
3. The maximum accumulation of annual leave is 960 hours. However, if an employee submits a request for leave and the request is denied because of seniority preference or the needs of the City, leave credits may be allowed to accrue beyond the 960 hour limit. Such an employee will be required to take off those days earned above the 960 hour limit at the discretion of the City. Once such excess days are used, the employee's maximum permissible accumulation returns to 960 hours. Except for illness, injury, or death, the maximum number of hours that can be cashed out will remain at 480 hours.
4. When an employee is terminated, accrued annual leave up to a maximum of 480 hours shall be paid to the employee at the employee's current basic rate of pay and all add pays as defined in Article 14 (Paid Holidays), B, 1, 2nd paragraph. If the employee is deceased, accrued annual leave up to a maximum of 960 hours shall be paid to the employee's estate.
5. Scheduling of leave shall be based first upon the convenience of the operations of the City, as determined by the City, and secondly upon the length of service of the employee.
6. The parties agree to work on an MOU about scheduling vacation leave, which would go into this section once an agreement is reached. This MOU creates an opportunity for the parties to mutually agree on a revised provision, but the contract will only be reopened to implement such revised provision upon mutual agreement.

B. Unscheduled Annual Leave (Sick Leave)

1. Annual leave shall not accrue during leaves of absence without pay or layoffs.
2. Unscheduled leave with pay shall be granted only for the following reasons:
 - a. personal illness or physical incapacity resulting from causes beyond the employee's control:
 - b. enforced quarantine of the employee by physician;
 - c. illness within the immediate family (mother, father, spouse, domestic partner, brother, sister, children, domestic partner's children, mother-in-law, father-in-law, domestic partner's parents, son-in-law, daughter-in-law, grandparent, grandchild, domestic partner's grandchild or any person considered in loco parentis) of the employee requiring the employee's presence. If the department head feels that it is appropriate, the employee may be requested to provide documentation that the illness does in fact require the employee's presence and such documentation will be at the Employer's expense; documentation would be routed to and maintained in confidential medical files in the Human Resources Department.
 - d. medical or dental treatment for the employee or within the immediate family of the employee as defined above, requiring the employee's presence. If the department head feels that it is appropriate, the employee may be requested to provide documentation of such medical treatment or of the need for the employee's presence and that such documentation will be at the expense of the Employer. Shift employees shall make every effort to schedule such treatment when they are not on duty.
3. In addition to the above listed reasons, up to three scheduled working days duration of paid leave may be taken by any employee to attend to child care responsibilities resulting from the illness of a spouse. Such leave shall run concurrently with paid leave granted under Paragraph 5 above.
4. When an employee goes on unscheduled leave, they must notify their supervisor within one (1) hour prior to the time they are required to report to work. Failure to do so may result in denial of leave pay. To receive leave pay in excess of three (3) working days, the employee must present a statement by a physician certifying that the employee's condition prevented them from performing the duties of their position during the period of illness. Expenses to obtain the certifying statement will be paid by the Employer.
5. However, this requirement may be waived by the department head or designee. In addition, a physician's statement at the Employer's expense may be required for sick leave of less than three (3) days duration. If a physician's statement certifying that an employee is not fit for work is required, and if the employee fails to supply it, the lost time shall be disallowed as sick leave and must be taken without pay.

If authorized leave is taken after an employee has expended all paid leave benefits, at the employee's option the lost time must either be charged against presently accumulated compensatory time or be taken without pay.

6. Absence for part of a day for reasons in accordance with the leave provisions shall be charged against accrued leave in an amount not less than one-quarter hours. Holidays and other regular days off shall not be charged against paid leave.

7. If a LEOFF II employee is absent due to illness or injury in connection with their employment with the City, for which they are receiving payment from State Industrial Insurance, the City's supplemental payment shall be as provided for under State law. Paid leave shall be charged on a pro-rata basis in this case until exhausted up to the employee's regular pay as defined by State law. It is understood that annual leave, shall not accrue while an employee is receiving the LEOFF II time loss supplement as required by State law.

8. Unscheduled annual leave used as sick leave and sick leave is primarily intended to be used for rest and recuperation from illness or injury. Any abuse of paid sick leave privileges, such as working at another job while drawing sick leave pay from the City, will result in the loss of paid leave for the lost time and will serve as grounds for disciplinary action.

C. Sick Leave Without Pay

1. Upon application of probationary or permanent employee, a leave of absence without pay may be granted by the City Manager or designee.

2. Such leave may be limited to twelve (12) months. The City Manager may from time to time require that the employee submit a certificate from the attending physician or from a designated physician. In the event of a failure or refusal to supply such certificate or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of their other duties, the appointing authority may cancel such sick leave without pay and require the employee to report for duty on a specified date.

3. Sick leave without pay shall be granted only after all accrued annual paid leave, compensatory time, and sick leave have been exhausted.

4. An employee may continue to purchase medical insurance through the City during sick leave without pay provided such purchases are permitted by the City's insurance carrier and provided further that the employee pays for all premium costs of such insurance.

5. The City Manager may terminate an employee if, at the end of the twelve (12) months of unpaid sick leave, the employee is unable to resume their duties.

D. Compassionate Leave

Permanent fulltime employees shall be allowed up to three (3) consecutive work days leave with pay in the event of a death in the employee's immediate family (mother, father, spouse, domestic partner, brother, sister, children, domestic partner's children, mother-in-law, father-in-law, domestic partner's parents, son-in-law, daughter-in-law, grandparent, grandchild, domestic partner's grandchild or any person considered in loco parentis, and person living in household. In extraordinary circumstances,

additional time off may be approved by the Chief or designee and charged to annual leave or compensatory time earned.

E. Family and Medical Leave

Family and medical leave shall be granted as required under the Family and Medical Leave Act (FMLA) and the current City Policies.

In accordance with state law, an employee eligible for sick leave or other paid time-off under the State Family Care Act, shall be allowed to use any or all of the employee's choice of sick leave or other paid time-off including comp time for an illness or accident, disability (including maternity), or qualifying illness or disability of a qualified family member. As defined in RCW 49.12.270 as amended, qualified family members are limited to children, spouse, parent, parent-in-law, or grandparent.

Employees, at the direction of the Police Chief or designee, may further be required to obtain a physician's verification of illness/injury when their illness, injury, or disability or the care of a qualified family member requires them to be absent from work, in accordance with state law. Documentation would be routed to and maintained in confidential files in Human Resources Department.

F. Paid Family and Medical Leave:

Each member will pay .253% of their wages towards the Paid Family and Medical Leave benefit. The City agrees to pay .147% of employees' wages towards the total .4% contribution required by the Employment Security Department.

ARTICLE 14 - PAID HOLIDAYS

A. The following holidays are recognized and observed by the City as paid holidays for permanent fulltime employees:

New Year's Day	January 1 st
Martin Luther King's Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Fourth Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Veterans Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	The day after Thanksgiving Day
Day before Christmas	December 24th
Christmas Day	December 25th

1. For employees who's regularly scheduled shift begins and ends on the same date: The employee's holiday will begin at 0001 hours and end at midnight.
2. For employees who's regularly scheduled shift begins on one date and ends on the next date: The employee's holiday will include the entire shift which begins or ends on the holiday,

including extensions of the shift both before or after the regularly scheduled shift, so long as there is not a separation of the regular shift and the extension(s), of not more than two hours. The employee shall be entitled to only one holiday-shift including any extensions, for each holiday described above.

B. Holiday pay and time off shall be governed as follows:

1. Employees who work on a holiday shall receive holiday-pay at a rate of one and one half (1.5) times the employee's regular rate of pay for all hours worked during the employee's holiday, and will be added to the pay that the employee would normally receive for the hours worked on that day.

Holiday pay will be calculated using the "basic rate of pay" and all "add-pays" earned by the employee at the time of the holiday being compensated. The current method used to calculate "Basic Pay Rates" are as follow: Basic Salaries are described in Article 9 and Appendix "A" of this agreement. Deferred compensation paid to employees by the City (as provided in Article 9 of this agreement) is defined as "basic pay for services rendered" and is therefore combined with the base wage (Basic Salaries) in Appendix A, to create the "Basic Pay Rate." "Pay Step 6" is also included in this Basic Pay Rate. "Pay Step 6" was created by Payroll staff, and was agreed to by both the City and Guild to address the provision of the labor contract found in Article 9, section A, concerning employees hired between October 1, 1977 and April 1, 1986. Payroll staff uses the term "Add-Pays" to describe: Education Incentive and Premium Pay, Fitness Pay, Longevity Pay, Bilingual Pay, Out of Classification Pay, and Special Pays/Premium Pays. Special Pays and Premium Pays currently include Detective assignments, FTO/PTO assignments, Motorcycle Officers, SWAT Team members, Canine Unit assignments, SROs, Instructors, DRE, and assignments to CJTC. These "Add-Pays" are figured using the percentages of the "Basic Pay Rate" described in the CBA.

At the employee's option, employees working on their holiday may receive compensatory time at the rate of one and one half (1.5) times the hours worked, in lieu of holiday-pay, subject to the accrual limitations established in Article 11 of this labor Agreement.

2. When the holiday falls on an employee's regularly scheduled workday, but the employee is given the entire holiday off, the employee shall receive their normal pay for all of the hours that the employee would normally be scheduled to work, at the regular rate of pay for the holiday time off.

3. When the holiday falls on an employee's regularly scheduled day off, the employee shall receive either:

a) A full day off with pay on the employee's first regularly scheduled day of work preceding or following the days off in which the holiday fell. This day off must be approved by a supervisor, or;

b) Holiday pay at the employee's regular straight-time rate of pay for all of the hours the employee would normally work during the employee's regular shift, in addition to the employee's regular wages during the pay period. If the employee works during the holiday on a scheduled day off, they shall receive holiday pay at a rate of one and one

half (1.5) times the employee's regular rate of pay for all hours worked and it will be added to the overtime pay that the employee would normally receive for the hours worked on that day, and; if the number of hours worked is less than the number of hours the employee works in a regularly scheduled workday, the employee will also receive holiday pay at the straight-time rate for the remaining hours in the length of the employees normal hours.

At the employee's option, employees working on their holiday may receive compensatory time at the rate of one and one half (1.5) times the hours worked, or compensatory time at the straight-time rate when the straight-time rate applies as described in Article 14, Section B., Paragraphs 3 and 5, in lieu of holiday-pay; subject to the accrual limitations established in Article 11 of this labor Agreement.

4. Employees assigned to Patrol, Walking/Bicycle Patrol, Traffic Officers, and the K-9 Unit, shall work their normally scheduled shifts that fall on the employee's holidays. These employees may be allowed to have the holiday off if they submit a request and with the approval of a supervisor.

5. Employees assigned to the Detective Bureau, Administration, Crime Prevention, Drug Unit, or, School Resource Officers shall be permitted to have the holidays off unless a supervisor directs them to work their regularly scheduled shift; or, the employee may work their regularly scheduled shift on the holiday with thirty days (30) advanced written notice of their intent to work the holiday. These employees who are directed to work on the holiday shall receive holiday pay at a rate of one and one half (1.5) times the employee's regular rate of pay for all hours worked during the employee's holiday, and will be added to the pay that the employee would normally receive for the hours worked and it will be added to the overtime pay that the employee would normally receive for the hours worked on that day, and; if the number of hours worked is less than the number of hours the employee works in a regular scheduled workday, the employee will also receive holiday pay at the straight time rate for the remark remaining hours in the length of the employee's normal hours. These employees who voluntarily submitted the 30-day advanced written notice of their intent to work on the holiday shall receive holiday pay at a rate of straight-time for all of the hours worked during the employee's holiday.

6. The Department may not reschedule an employee's regular shift for the purpose of avoiding payment of holiday pay as provided above.

ARTICLE 15 - JURY SERVICE

An employee shall continue to receive their regular salary for any period of required service as a juror. Employees will be expected to report for work when less than a normal workday is required by such duties.

Employees working on swing or graveyard shifts who are required to perform jury duty on a scheduled workday will have their scheduled hours reduced by the time actually spent in jury service. The City may move employees temporarily to day shift for the period of jury service without advance notice.

ARTICLE 16 - UNIFORMS

- A. Officers: The City shall provide a complete uniform for each Officer as listed in Appendix C. Once during the term of this Agreement, each Officer will have the choice of uniform options listed in Appendix C. The City shall also replace components of the uniform, which have been damaged in the performance of duty.
- B. Detectives: Every Officer assigned to Detectives shall be given an allowance for clothing in the amount set forth in Appendix A, which allowance shall be paid upon their assignment as a Detective and which shall be paid quarterly following the first year of assignment.
- C. Cleaning Allowance: All employees within the bargaining unit shall be given a cleaning allowance in the amount as set forth in Appendix A, which allowance shall be paid quarterly.
- D. Footwear: The City agrees to pay each Officer an allowance of \$125.00 during the month of January of each year, for the purchase or repair of appropriate shoes or boots to be worn on duty. This Allowance is considered a taxable fringe benefit and as such will be treated as income and taxable under applicable federal laws.

ARTICLE 17 - INSURANCE BENEFITS

The Guild and the City agree to the medical, dental and vision insurance plans offered by the Association of Washington Cities Employee Benefit Trust (AWC). The City agrees to maintain the benefits offered in those AWC plans at existing or substantially similar levels for the duration of this Agreement.

A. Dental Insurance

The City agrees to pay the total cost of dental insurance for employees and their eligible dependents for the Washington Dental Service Plan F and Orthodontia Plan II.

B. Medical Insurance

1. The City agrees to pay the total premium for employee medical coverage.
2. , Guild members will be able to choose between the Regence Health First 250 Plan and the Kaiser \$20 Co-Pay Plan.
3. The City and the employee will continue to share the cost of dependent medical coverage. The City will contribute eight-five percent (85%) and the employee fifteen percent (15%) of the total cost of dependent medical premiums.
4. Guild members shall be allowed to sign up for eligible pretax health expenses as part of the City's Flexible Spending Account plan.
5. The City shall study options concerning retiree health insurance coverage. In the event the City develops such a program during the term of this Agreement it shall be offered to the Guild.

In the event the City fails to develop such a program which the Guild finds satisfactory, the parties reserve the right to renew this subject in future negotiations.

6. Incentive Plan: Members of the collective bargaining unit, who opt out of the Medical Plans paid by the City of Olympia for employees, shall be paid an incentive of two hundred fifty dollars (\$250) per month by the City. The incentive plan will be available to employees upon the signing of this agreement. In order to receive the incentive, employees must provide proof of other medical coverage except for those employees who are voluntarily covered as a "spouse/partner" rather than as an "employee" under the City's insurance plan.

Employees of the City who are voluntarily covered as a "spouse/partner" rather than as an "employee" under the City's insurance plan must enroll during the open enrollment period. The city reserves the right to cease this program at any time for any reason. If the City ceases the program for any reason other than violation of state or federal law the City will do so during open enrollment.

7. Both parties agree to re-open negotiations around medical/dental/vision benefits during the 2020--2021 CBA should the Union request to do so. The parties further agree that any changes in medical/dental/vision provider collectively bargained and agreed upon as part of the reopener shall not take effect prior to January 1, 2021.

C. Long Term Disability Insurance

The City agrees to pay up to \$55 per month per member during the term of the Agreement for disability insurance for a plan of the Guild's choice.

D. Life Insurance

The City agrees to provide a life insurance policy for each employee in the amount of \$150,000.00.

E. Vision Insurance

The City will pay 100% of the premiums for the employee and dependents for the Vision Service Plan, full family, no deductible, second pair rider.

G. Deferred Compensation

It is mandatory that all members of the collective bargaining unit shall defer a minimum of fourteen point four eight percent (14.48%) of their base salary per month into the Deferred Compensation Program under Section 457 of the Internal Revenue Code. This amount includes the contribution to the deferred compensation plan, made by the City on the employee's behalf, as described in Article 9 of this Agreement.

Those members of the collective bargaining unit enrolled in the Group Health Cooperative medical insurance plan offered by the City through the Association of Washington Cities Employee Benefit Trust (AWC), may reduce their mandatory contribution to their deferred compensation plan from 14.48% or 16.44 % to a lower amount, but not lower than nine point four-eight percent (9.48%).

ARTICLE 18 - PHYSICAL FITNESS

A. The Olympia Police Guild and the City of Olympia hereby agree that the City may implement voluntary physical fitness standards for employees. Specifically, the City and the Guild agree:

1. The Guild shall not object and shall agree to the implementation of voluntary physical fitness standards attached hereto as Appendix E and incorporated by reference.
2. In the event the City's physical fitness standards are found to violate State or Federal law, or the Constitution of the State of Washington or the United States, the City agrees to hold the Guild (as a legal entity) harmless for any claims or damages arising from physical fitness testing of employees provided that the City need not indemnify or hold the Guild harmless for any dishonest, fraudulent, criminal, or malicious act. In addition, either party may reopen negotiations on physical fitness standards in order to amend the standards to comply with legal requirements.
3. The Guild recognizes the City's right to amend entry-level physical fitness hiring standards without bargaining with the Guild. The City recognizes the Guild's right to bargain over any proposed changes in the physical fitness standards for employees.
4. Any dispute involving the interpretation, application, or alleged violation of any provision of this article will be subject to the grievance procedure of the parties' collective bargaining agreement.

B. Any employee injured on the job that results in a L&I time loss claim will be required to meet with the City's Health Advisor prior to returning to work to ensure that necessary measures are taken so that the employee does not re-injure him/herself. The purpose of the meeting is to impart information to the employee and no employee will be required to answer questions about medical conditions other than the specific job related injury or illness. Furthermore, an assessment will be made as to whether the employee would be a good candidate for voluntary participation in the Chronic Pain program. All expenses for participation in the Chronic Pain program due to the on-the-job injury will be paid for by the City. Nothing herein constitutes a waiver of employee privacy rights under state or federal law.

C. Employees shall be allowed 40 minutes of on-duty time each workday for physical exercise in a City-provided exercise facility, under the following conditions:

1. Exercise time will not be allowed during the last three hours of the shift, if the employee has daily paperwork, , or other tasks that need to be completed prior to the end of their shift.
2. Exercise time will not be allowed and may be interrupted when there is a call for service that is a crime in progress or when there is a risk to the safety of persons or other officers. These are typically Priority 1 and 2 calls for service. Priority 3 & 4 calls (non-emergency) may wait until the exercise period is expired. If exercise time is interrupted due to a call for service, the responding officer shall make themselves patrol-ready without delay.
3. Officers may shed their ballistic vest and duty-belt but must otherwise remain in uniform .

4. Longer voluntary exercise periods and shower time may be permitted for Training Days. Officers assigned to specialty units shall be allowed to utilize part of their physical exercise time to shower prior to returning to duty.

5. Failure to receive the exercise time shall not result in any overtime liability for the employer.

6. If at any time law dictates that donning and doffing time must be reinstated and compensated by the City, the 30 minute on-duty physical exercise period each workday shall end and no longer be compensated by the City.

ARTICLE 19 - DISCIPLINE AND DISCHARGE

Discipline, including oral reprimand, written reprimand, suspension, demotion, reduction in salary, discharge, or other disciplinary sanction, shall be for just cause.

Disciplinary action which results in loss of pay shall be subject to the grievance procedure (up to and including arbitration) set forth in Article 7. Disciplinary action which does not result in loss of pay (oral reprimand and written reprimand) shall be subject to the grievance procedure set forth in Article 7, but may not be taken to arbitration under Step 4 of Article 7. Provided, however, that in a grievance concerning disciplinary action which results in a loss of pay and which is based in part on the issuance of a prior reprimand, the employee shall be entitled to challenge the appropriateness of the prior reprimand in the grievance concerning discipline which resulted in loss of pay.

Submission of any grievance concerning discipline will follow the provisions set forth in Article 7, Grievance Procedure.

ARTICLE 20 - PARKING

The City shall continue to provide free and reasonably secure parking for personal vehicles belonging to members of the Guild; immediately before, during, and immediately after the employee's workday, at the workplace. The workday shall include the employee's regularly scheduled workday, overtime assignments, work related meetings, Guild meetings with City Officials, and court appearances.

There shall be two secure parking lots for Guild Members to park their personal vehicles. The primary parking lot is located inside the fence at City Hall; 601 4th Avenue East, Olympia; and a secondary parking lot located in the fenced parking lot at the Lee Creighton Law and Justice Center; at 900 Plum Street SE., Olympia. All members of the Guild shall be allowed to park in the primary parking lot, with the exception of Patrol Swing Shift Officers under the following conditions:

All police officers regularly assigned to both Early and Late Swing Shifts, may park at the Justice Center , inside the fenced parking lot . The City will have police cars there for the Swing Shift Officers. The Swing

Shift officers shall be there no later than at the start of their regularly scheduled shift; 1420 hours for Early Swing Shift and 1620 hours for Late Swing Shift.

All Swing Shift officers shall have ten minutes to drive an assigned police car to City Hall. Swing Shift officers are expected to be in the briefing room at 1430 hours for Early Swing Shift and 1630 hours for Late Swing Shift. Swing Shift officers shall then return their assigned police vehicles to the parking lot at the Justice Center during the last ten minutes of their shift. If Swing Shift Officers are extending the end of their scheduled shift with overtime, they will include ten (10) minutes of paid overtime to return their assigned patrol car to the Justice Center fenced parking lot. If officers are working a period of overtime before the start of their regular shift, they will include ten (10) minutes of overtime for taking their assigned police car from the Justice Center to City Hall. Any overtime assignments not connected to the officer's regularly scheduled shift, when using a police vehicle parked at the Justice Center, will include paid time for retrieving and returning the vehicle to the Justice Center parking lot, except for off-duty employment.

If officers are moving a police vehicle to, or from, the Justice Center parking lot while not wearing their ballistic vest, or not equipped with their patrol rifle, or not equipped with their duty pistol and other less than lethal equipment, shall not be required to stop for anyone attempting to flag down the officer. In such cases the officer will notify the dispatcher of the person needing an on-duty officer, and may direct the person to go to the police station by pointing, or by use of the public address system in the police vehicle.

Officers assigned to Swing Shift, but are working an overtime assignment other than Swing Shift on a day off; or, attending training at City Hall; or, attending a work related meeting; or, meeting with City Officials; or, going to court; shall be allowed to park in the secure parking lot at City Hall.

Swing Shift Officers electing to take their assigned patrol vehicle home will do so only during their respective workweek, (from the start of their patrol shift on their first workday of their workweek, to the end of their patrol shift on the last workday of their workweek,) and will be subject to the geographical boundaries and provisions of OPD General Order 17.5.5 (Authorized use of Department Vehicles). These officers will be afforded the 10-minute driving allowance, when they report to their first workday of each workweek. On the last workday of each workweek, Swing Shift Officers will be allowed the ten minute driving allowance to return the car to the Justice Center parking lot. These Swing Shift Officers voluntarily participating in the Take-Home-Car Program will not get drive time, from the end of their first workday of the workweek, to the beginning of the last workday of their workweek. Officers not participating in the Take-Home-Car Program will get time to move patrol cars to/from the Justice Center.

All police officers not assigned to Swing Shift will report to work at City Hall at their regularly scheduled times. The City shall provide these officers with free parking within the fenced police parking lot at City Hall.

If a parking space is not available for a Guild Member's personal vehicle, the Officer may move a police vehicle to an available street parking space to make room in the fenced parking lot for their personal vehicle.

ARTICLE 21 - INDEMNIFICATION OF EMPLOYEES

The City shall provide legal defense and pay the cost of settlements and judgments for employees as provided in OMC Chapter 2.70. A member who disagrees with the City Manager's determination under OMC Chapter 2.70 may grieve that determination using the procedure set forth in Article 7 of this Agreement.

ARTICLE 22 - DASH-MOUNTED VIDEO SYSTEMS/BODY CAMERAS

- A. To enhance the ability of law enforcement personnel to accurately document events, conditions, and statements made during traffic stops, arrests, critical incidents and other related contacts dash-mounted video and audio systems may be installed in all patrol vehicles. It is further agreed that the labor-management committee will be responsible for writing the specific department policy that will govern the use, timing, recording, records retention and destruction of such recordings. The video system shall not record at all times when the patrol vehicle is in use but shall be in operation as defined by the department policy for the purposes described above. Officers shall not be required to wear or carry a remote microphone at any time. Officers will be allowed to view any such video recordings before making any written or recorded statements and may view the recordings while writing reports related to the recordings.
- B. Prior to any deployment and/or use of Body Cameras, the Parties agree to open the contract to negotiate through Labor Management the impacts and use of body camera technology.

ARTICLE 23 - REIMBURSEMENT OF EXPENSES

The Guild agrees to request reimbursement of expenses in accordance with the City's general accounting policies. The City will notify the Guild in writing of any changes made to these policies and to discuss issues related to implementation.

ARTICLE 24 - RETIREMENT ID

Every police officer who is retiring from the Olympia Police Department in good standing and for reasons other than mental instability, shall receive an identification card from the Police Department by the retiring officer's retirement date, provided that the officer has given notice of the officer's "intent to retire" two weeks or more in advance. The identification card shall bear a recent photograph of the retiring officer, the card shall be signed by the Chief of Police and identify the officer as a retired police officer. To be eligible for the Retired Law Enforcement Officer Identification Card, the retiring officer shall have served for an aggregate of 15 or more years as a law enforcement officer and has a non-forfeitable right to benefits under the retirement plan of the State of Washington (LEOFF2) and is not prohibited by Federal law from receiving a firearm. The identification card shall contain the following language on the backside of the card in a font that is reasonably legible:

The officer identified on this card retired in good standing from service with the Olympia Police Department as a full-time law enforcement officer, for reasons other than mental instability; was regularly employed as a law enforcement officer for an aggregate of ___ years; has a non-forfeitable right to benefits under the retirement plan of the agency and the State of Washington; before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person, for

any violation of law, and had statutory powers of arrest. As long as the retired full-time law enforcement officer is not prohibited by Federal law from receiving a firearm, the retired officer is entitled to the privileges afforded by law.

Revised Code of Washington (RCW) 9.41.060, and;

United States Code (USC) Title 18 Chapter 44 Section 926C.

Every police officer who has given notice of the officer's intent to retire two weeks in advance of the retirement date shall be allowed on-duty opportunities to qualify with their personal handgun(s), using the Department's qualification course for off-duty firearms or secondary weapons. Any such officer who qualifies shall be issued a Certification of Firearms Qualification card from the Police Department bearing the officer's name and stating that the officer has met the qualification standards of the Olympia Police Department. The certificate shall be valid for one year of the date of the qualification and signed by the range officer making the certification. The date of the qualification shall be written on the certification card. The certification card shall also specify the type of firearm(s) (pistol and/or revolver) that the officer has qualified with.

The intent of this Article is to enhance current retirement practices regarding retiree identification and badges.

ARTICLE 25 - SAVINGS CLAUSE

Should any provisions of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.

ARTICLE 26 - ENTIRE AGREEMENT

A. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no express or implied or oral statements shall add to or supersede any of its provisions.

B. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Guild, for the life of this Agreement, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

ARTICLE 27 - TERM

This Agreement shall become effective on, but not earlier than January 1, 2020 upon signing by both parties. It shall remain in full force and effect through December 31, 2021.

IN WITNESS WHEREFORE, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THIS _____ DAY OF _____, 2020.

FOR THE CITY OF OLYMPIA

FOR THE OLYMPIA POLICE GUILD

Steven Burney, City Manager

Bill Smith , Guild President

George Clark, Guild Negotiations Chair

APPENDIX A

I. SALARIES

Effective January 1, 2020, base wages shall be as follows:

	A	B	C	D	E
Police Recruit	6,178.14	6,487.09			
Police Officer	6,669.30	7,239.65	7,640.81	7,965.81	8,499.12

Beginning January 1, 2020 and January 1, 2021 covered employees will receive a salary increase of 90% of Seattle CPI-U (based on July 1 – June 30 CPI-U figures from the prior year) with a minimum increase of 1% and a maximum increase of 4%.

The parties agree in this 2020-2021 Collective Bargaining Agreement (CBA) to utilize the above formula. In adopting this formula, the parties are also indicating the reliance on this formula is non-precedential and, as a result, this is not intended to establish any pattern or method for determining wages that is in any way intended to be carried beyond the term of the 2020-2021 CBA.

Retroactive pay shall be paid in separate checks from regular payroll (no direct deposit for retroactive pay). Retroactive pay may, at the employee’s option, be paid directly into the employee’s deferred compensation account rather than a separate check.

II. DETECTIVE CLOTHING ALLOWANCE

Six hundred dollars (\$600) per year to be paid lump sum upon assignment during an officer's first year of assignment to the Detective Division and quarterly thereafter.

III. CLEANING ALLOWANCE

Seven hundred twenty five dollars (\$725) per year to be paid quarterly.

IV. EDUCATIONAL INCENTIVE AND PREMIUM PAY

AA Degree, 90 quarter credits, or 60 semester credits	3% of base salary
BA/BS Degree	6% of base salary
Masters Degree	8% of base salary

V. DEFERRED COMPENSATION

See Article 9 and Article 17.

VI. LONGEVITY PAY SCHEDULE

Longevity pay will be re-instated and paid within the following schedule:

Years of Service	1-6	7-10	11-14	15-18	19-22	23-26	27 & More
% of Base Pay	0%	1%	3%	5%	7%	8.5%	10%

Employees qualify for longevity by having the requisite years of service.

APPENDIX B

Annual leave shall be based on the following schedule:

Years of Service	Days
1	23
2	24
3 and 4	25
5-7	26
8-10	27
11-13	28
14-16	29
17-19	31
20-22	33
23+	35

One day of annual leave is equal to eight (8) hours.

APPENDIX C

1.

APPENDIX C

All officers will be issued:

- 1- Class A uniform
- 1- Patrol Jacket
- 1 - Patrol duty belt

- 1 - Patrol Accessories

All Officers will have their choice of:

- 2 – Utility uniforms

- Or

- 1 – Utility uniform

- 1 – Jumpsuit

Additionally, Officers assigned to:

- K-9 unit:
 - Jumpsuit (3)
 - Exterior vest (1)
 - Flashlights (2)
 - Gloves (1)
- Walking patrol unit:
 - Bicycle helmet (1)
 - Bicycle pants (2)
 - Bicycle shorts (2)
 - Bicycle jacket (1)
 - Gloves (1)
 - Safety glasses (2 – night/day)
- Traffic unit:
 - Motorcycle jacket (1)

- Motorcycle trousers (2)
- Motorcycle boots (1)
- Rain Suit (1)
- Motorcycle helmet (1)
- Gloves (1)
- Safety glasses (2 – night/day)
- Bicycle trained but not assigned to the Walking Patrol Unit:
 - Helmet (1)
 - Bicycle Pants (1)
 - Gloves (1)
 - Glasses (2 – night/day)

Definitions:

Class A (Poly/Wool Blend in men/women sizes):

- 8 Point Hat w/ silver band and hat badge with rain cover
- Long Sleeve Shirt
- Tie, clip on w/ silver department tie clasp
- Trouser
- Basket Weave Duty Belt
 - Velcro Under Belt
 - “Sam Brown” Duty belt with metal buckle
 - Holster
 - Mag Pouch
 - Handcuff Pouch
 - Radio Pouch
 - Key Holder
 - Pepper Spray Pouch
 - ASP Baton Holder
 - Baton Ring
 - Belt Keepers
 - Name Plate

Utility uniform (Polyester in men/women sizes):

- Long Sleeve Shirt
- Short Sleeve Shirt
- Patrol Trousers

Jumpsuit:

- Jumpsuit (available to request when officer completes probation)

Patrol Jacket (men/women sizes):

- Outer Shell with full patches
- Inner Soft Shell with full patches

Patrol Duty Belt (nylon):

- Under Belt
- Duty Belt w/ plastic buckle
- Holster w/ tac light
- Mag Pouch
- Key Holder
- OC Pouch
- Handcuff Case (double)
- Radio Holder
- ASP Holder
- ASP Baton
- Tourniquet Pouch
- Flashlight Holder
- Suspenders w/ "POLICE" panel in white

Patrol Accessories:

- Wool ballcap
- Wool/Knit cap
- Rain Jacket
- Black Training Shirt
- Khaki Training Pants

APPENDIX D

BILL OF RIGHTS

1. Employee Rights. It is agreed that the City has the right to discipline, suspend, or discharge any employees for just cause.

2. Bill of Rights.

2.1 In an effort to ensure that investigations made by an officer or agency as designated by the Chief of Police of the Police Department are conducted in a manner which is conducive to good order and discipline, the employees shall be entitled to the protection of what shall hereafter be termed as the "Employee Bill of Rights." Nothing in this Article shall be constructed so as to prevent the interviewing by supervisory personnel of their subordinates as necessary for the conduct of department business. These guidelines apply whenever the Department decides to conduct an investigation of an employee, and that the results of the investigation can reasonably lead to discipline of the employee. The Guild recognizes the need to clarify citizen inquiries and complaints in a timely fashion.

2.2 Every employee who becomes the subject of an internal investigation shall be provided a copy of the complaint if written or a written summary of the complaint if it is not available.

2.3 Any employee who becomes the subject of a criminal investigation shall have all rights accorded by the State and Federal constitutions and Washington law.

2.4 Forty-eight (48) hours before any interview commences, the employee shall be informed, in writing, of the nature of the investigation, that they are considered to be a subjects at that stage of the investigation, and provided sufficient information concerning the factual nature or subject of the investigation so as to reasonably apprise the officer of the specific allegations. An employee may waive the 48-hour requirement in writing. The written notice requirement does not apply to an investigation not reasonably likely to result in an economic sanction, provided that in such instances an employee could assert a right to a 48-hour period to consult with a Guild representative and prepare for the interview. An employee who is a witness and is not a subject shall be informed in the same manner as subjects provided that such notice need not be given forty-eight (48) hours in advance, provided further that witnesses retain whatever rights to representation they may be allowed law

2.5 The interview of an employee shall be at a reasonable hour, preferably when the employee is on duty, unless the exigency of the interview dictates otherwise.

2.6 At the cost of the requesting party, the employee or City may request that an investigative interview be recorded, either mechanically or by a stenographer. There can be no "off-the-record" questions. Upon request, the employee under an investigation shall be provided an exact copy of any written statement the employee has signed or, at the employee's expense, a verbatim transcript of the interview.

2.7 The employee will be required to answer any questions involving administrative (as opposed to criminal) matters under investigation. Prior to any questioning, the employee will be notified in writing and acknowledge receipt of the following:

“You are about to be questioned as part of an internal investigation being conducted by the Police Department. You are hereby ordered to answer the questions which are put to you which relate to your conduct and/or job performance, or your fitness for duty, and to cooperate with this investigation. Your failure to cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.”

Employees who are subject to a criminal investigation shall be advised of that.

2.8 Interviewing shall be completed within a reasonable time and shall be done under circumstances devoid of intimidation or coercion. Forty-eight (48) hours prior to all investigative interviews, the employee shall be afforded an opportunity and facilities to contact and consult with a Guild representative before being interviewed, and to be represented by the Guild representative to the extent permitted by law. The employee shall be entitled to such brief intermissions as the employee shall reasonably request for personal necessities, meals, telephone calls, consultation with a representative, and rest periods.

2.9 The employee shall not be subjected to any profane language nor threatened with dismissal, transfer or other disciplinary punishment as a guise to obtain the resignation of said employee nor shall the employee be subjected to intimidation in any manner during the process of interrogation. No promises or rewards shall be made to the said employee as an inducement to answer questions.

2.10 Investigations shall be concluded within a reasonable period of time. Within a reasonable period after the conclusion of the investigation and no later than forty-eight (48) hours prior to a pre-disciplinary hearing, the employee shall be advised of the results of the investigation and the recommended disposition (which may be a range of possible dispositions) and shall be provided a copy of the complete investigatory file.

2.11 All interviews shall be limited in scope to activities, circumstances, events, conduct or actions which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information which is developed during the course of the interview.

2.12 No employee shall be requested or required to submit to a polygraphs test; nor shall this employee be dismissed for or shall any other penalty be imposed upon the employee solely for a failure to submit to a polygraph test. This provision shall not apply to either the initial application for employment or to persons in the field of public law enforcement who are seeking promotion.

2.13 When an employee, whether on or off duty, uses deadly force which results in the injury or death of a person, the employee shall not be required to make a written or recorded statement for forty-eight (48) hours after the incident. The affected employee may waive the requirements to wait forty-eight (48) hours.

2.14 Should any section, subsection, paragraph, sentence, clause or phrase in this Article be declared unconstitutional or invalid, for any reason, such decision shall not affect the validity of the remaining portions of this Article.

2.15 Medical or Psychological Examinations.

2.15.1 The Employer retains the right to require employees to submit to medical or psychological examinations whenever there exists reasonable cause to believe an employee is unfit for duty. Any relevant medical history of the employee which the examining professional conducting a psychological evaluation requests shall be released by the employee only to the examining professional.

2.15.2 The examining professional shall issue a written report to the Employer, as the client, provided however, a Guild representative with permission of the employee shall have the right to meet with the examining professional to discuss the evaluation results and provided further that such report shall indicate only whether the employee is fit or unfit for duty and in the event an employee is unfit the expected prognosis and recovery period as well as any accommodations which could be made to allow an employee to return to duty.

2.15.3 If the employee believes that the conclusions of the examining professional are in error, they may obtain an additional examination at their own expense and the Employer will provide the examining professional with documents which were utilized by the Employer's examining professional.

2.15.4 The Employer will undertake to have the Employer's examining professional make themselves available to answer appropriate questions by the examining professional who conducts the independent examination.

2.15.5 Should an employee grieve a disciplinary or discharge action taken as a result of an examination, the Employer shall allow release of the examination and supporting documents upon which it relies for the action, and all other prior examinations of the employee.

2.15.6 The employee making the request for release or transfer of examination materials will execute waiver forms as needed.

2.16 Personnel Records

(a) Contents. A "personnel file" shall be defined as any file maintained by the City or Department (including supervisors) pertaining to the bargaining unit member's employment status, work history, training, disciplinary records, or other personnel related matters pertaining to the bargaining unit member. It is further understood that a personnel file does not include material relating to medical records, pre-appointment interview forms, Internal Affairs files, or applicant background investigation documents such as, but not limited to, psychological evaluations and polygraph results.

(b) Each employee's personnel files shall be open for review by the employee at reasonable times and with reasonable notice, provided that employees shall not have the right to review psychological evaluations. The Employer shall maintain no secret personnel files not subject to inspection.

(c) Any complaint that is not sustained will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained violation of City Policy or the Police Department General Orders, not listed below, resulting in a verbal, written warning or suspension of 5 days or less will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained complaint of criminal law violations, City administrative Guidelines pertaining to harassment, substance abuse, workplace violence or the Police Department's policy regarding truthfulness or a single suspension of more than 5 days may be retained indefinitely. Removal of any item will be requested by the employee.

(d) The Employer will promptly notify an employee upon receipt of a public disclosure request for information in the employee's personnel file. The Employer will also provide at least three (3) business days notice before releasing any requested documents. The Employer will allow the employee and the Guild the opportunity to legally object to unwarranted disclosures.

USE OF FORCE

3. Statement of Purpose. The parties recognize that adequate training is critical for preventing unnecessary use of force and for minimizing the impact on an officer who is involved in a situation where force must be used. The Department recognizes that it is its obligation to provide adequate training in this area, including the reactions of officers in critical instances and in dealing with problems that result after being involved in a critical incident.

4. Procedures. Any time a major incident occurs involving a use of force as defined in the Department's Policy and Procedures Manual, the following will apply:

4.1 Upon arrival at a scene where use of force has taken place, representatives of the Department shall only request from the officer that information needed to secure the scene, identify witnesses, and to follow-up and apprehend any perpetrators of the crime who may be at large or other exigent circumstances. The Department will not otherwise question the officer(s) regarding any information regarding the incident, but will inform the officer involved in the incident that they have the right to be allowed immediate access to any of the following:

- a. Their spouse;
- b. The Association's attorney and the attorney's agents;
- c. The officer's personal attorney;
- d. Psychologists, psychotherapists, or ministers depending upon the officer's choice;
- e. Peer support counselor;
- f. Guild Representative.

The Department will notify a Guild representative of the incident and allow the employee to have access to the representative. The Department and the Guild shall mutually agree on designated peer support counselors.

4.2. The Department will conduct a thorough and competent investigation of the incident, including using the appropriate techniques for preservation of the scene if relevant where the use of force took place. All reports and findings from this investigation will be immediately made available to the Guild upon request. If the Department must preserve a chain of custody for weapon or weapons utilized in the incident, the officers will be immediately issued replacement weapons unless it is clearly inappropriate to do so.

4.3. The Department will assign an interviewer to interview the officer. If there are multiple investigators assigned because of the concurrent investigations that are underway, the investigators will coordinate so that one investigator will be primarily responsible for the interview. All attempts will be made to minimize the need for successive interviews.

4.4. No statement will be required within 48 hours after the incident. The interview of the officer involved in a critical situation will be done under circumstances intended to minimize the traumatic affect of the interview on the officer. The officers will be given reasonable breaks and periods to prepare for the interview, and be given access to the above-listed personnel to be present during the interview upon request. If requested, the interview will be postponed until the officer has been able to seek a single session of professional counseling before the interview takes place.

4.5 At the discretion of the Police Chief, the officer may be placed on administrative leave.

4.6 While on administrative assignment, the City will allow access to the officer's choice of counselors or doctors without loss of pay or benefits to the officer.

4.7 When either the officer or the Department believes that the officer should return to the officer's regular assignment, at the Department's option the officer will provide a letter from a licensed treating counselor or doctor indicating that the officer is ready to return to their regular duties or to modified duties. The Department at its option may request an independent medical exam, which will be conducted in conformity with the procedures outlined in this Agreement including section 2.16 of this Article.

4.8 After returning to duty, the officer will be encouraged and allowed full access to counselors without loss of pay or benefits to the officer while participating in such program.

APPENDIX E Physical Fitness Test

STATION 1 - OBSTACLE COURSE (43 seconds)

Under Barricade

Zig Zag Run

Balance Beam

Thirty (30) Yard Run

Pass Fail Testing Officer

STATION 2 - 300-YARD RUN (90 seconds)

Pass Fail Testing Officer

STATION 3 - VEHICLE PUSH - 10 FEET (13 seconds)

Pass Fail Testing Officer

STATION 4 - BODY DRAG - 30 FEET (15 seconds)

Pass Fail Testing Officer

The physical fitness test will be conducted in a single session. Moving from one event to another will allow adequate rest between events. Testing is considered on-duty time. Testing will be held during the months of May and June. Employees will be provided at least two opportunities (one in each month) to pass the test. The test will normally be scheduled for a time while employees are on duty. For special circumstances such as serious illness or injury, at the Chief's discretion, an officer may be given another opportunity to test outside the normal testing times. Employees who successfully complete the test will be provided incentive pay equal to a percent of their base wage as described below which shall be added to their regular paycheck

Years of Service (Based on the years of service the employee is currently in; not the year of service completed.)	1-10	11 - 14	15 - 18	19+
Incentive Pay (Percentage of Base Salary)	1%	1.5%	2%	2.5%

Such incentives shall be considered earned for the following twelve month period and must be re-earned each May or June to take effect July 1. In the event the City's physical fitness standards are found to violate State or Federal law, or the Constitution of the State of Washington or the United States, and the test is no longer administered for this or any other reason, the City agrees to pay the premiums in the table above, minus 1%, of the employee's base wage to all employee's

**POLICE GUILD
ECONOMIC AGREEMENTS SUMMARY
January 5, 2021**

The City and the Union are currently negotiating the labor contract for the period January 1, 2020 – December 31, 2021. The following summarizes the proposed agreement:

ITEM	AGREEMENT	ESTIMATED ANNUAL COST INCREASE
COLA on base salary	2020: 2.07% 2021: 1.0% Min/4.0% Max Tied to CPI-U;	\$164,737 \$107,839
Payroll Tax on Increases	2020: 2021:	\$2,389 \$1,563
Specialty Pay **	2020: 2021:	\$40,504 \$628
Benefits	2020: 2021:	\$25,080 \$11,701
Shoe Allowance	2020: 2021:	\$1,160 \$0
Life Insurance	2020: 2021:	\$0 \$12,180
MERP	No Change	\$0
VEBA	No Change	\$0
Deferred Comp	No Change	\$0
2020	TOTAL: As a percentage of annual payroll:	\$189,818 2.32%
2021	TOTAL: As a percentage of annual payroll:	\$119,541 1.44%

These calculations are based upon 60 employees.

** This includes an increase to the Detectives to 4% and the addition of Walking Patrol and Neighborhood Policing at 3.3%



City Council

Approval of Community Development Block Grant Program Year 2019 Annual Report Public Process

Agenda Date: 1/12/2021
Agenda Item Number: 4.F
File Number:21-0028

Type: decision **Version:** 1 **Status:** Consent Calendar

Title

Approval of Community Development Block Grant Program Year 2019 Annual Report Public Process

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Program Year 2019 CDBG Consolidated Annual Performance and Evaluation Report (CAPER) Public Process and direct staff to prepare a 15-day public comment period from January 13 - January 28, 2021.

Report

Issue:

Whether Council should launch the Program Year 2019 CDBG Consolidated Annual CAPER Public Process.

Staff Contact:

Cary Retlin, Home Fund Manager, Community Planning and Development, 360.259.8066

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Each year the City reports on the performance of the Community Development Block Grant (CDBG) Program through the Consolidated Annual Performance & Evaluation Report (CAPER). This report is presented in a short "Citizens Summary" version and the full CAPER format that will ultimately be submitted to the federal Department of Housing and Urban Development (HUD).

The Citizen's Summary Report and a copy of the draft CAPER will be available to the public and Council in your next Staff Report for the CDBG Public Hearing.

This CAPER details the performance of the City's CDBG Program for the Program Year 2019 (September 1, 2019 - August 31, 2020), with the specific accomplishments outlined.

The City will hold a 15-day public comment period from January 13, 2021 through 5 pm Thursday, January 28, 2021 to allow the public to review the CAPER. Copies of the CAPER will be made available online on the city's CDBG program webpage.

The public will be able to submit comments on the CAPER via the following methods:

Email: cdbg@ci.olympia.wa.us

Mail: Olympia CDBG Program, PO Box 1967, Olympia, WA 98507

Testify: Public Hearing held via Zoom, 5:30 p.m., Tuesday, January 19, 2021. Registration link for Public Hearing will be listed on City of Olympia Website.

Final approval of the CAPER is scheduled for February 2, 2021 with final submission to HUD by February 15, 2021.

Neighborhood/Community Interests (if known):

All neighborhoods and community stakeholders have an interest in how federal CDBG funds are invested in community development programs and projects.

Options:

1. Move to approve launch of Program Year 2019 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) public process.
2. Do Not approve launch of the Program Year 2019 CDBG Consolidated Annual Performance and Evaluation Report (CAPER) public process. Delay may result in a timeliness finding from HUD.

Financial Impact:

This CAPER will report accomplishments for \$450,000 in Program Year 2019 Federal Entitlement Funds.

Attachments:

CDBG Webpage

CDBG Program

Public Comment Period - PY 2019 Amendment to Allocate CDBG-CV3 COVID Funds

The City of Olympia invites the public to comment on the proposed amendment to program year 2019 to allocate CDBG-CV3 COVID funds of \$370,161.00. Staff reports on the proposed amendment will be available for review on November 5, 2020 and can be found [here](#) under 'Meeting Details'. **Public comment will be received November 3 – November 10, 2020.**

Please provide comments by email or public testimony:

- **Email:** cdbg@ci.olympia.wa.us
- **Public Testimony:** **Public Testimony: Tuesday, November 10, 2020, 5:30 p.m. via Zoom Webinar.** Details and registration for the Public Hearing can be found [here](#).

What is the CDBG Program?

The City of Olympia receives federal Community Development Block Grant (CDBG) funds from the Department of Housing and Urban Development (HUD). According to the HUD website, the CDBG Program provides federal funds to "develop viable communities by providing decent housing, a suitable living environment and opportunities to expand economic opportunities, principally for low- and moderate-income persons." The City maintains a five-year strategic housing plan that outlines the priorities for CDBG grant funding. Each year, the City re-evaluates the plan to reflect the needs of the community. The Annual Action Plan serves as the blueprint for how Olympia will invest CDBG funds to address high-priority local needs. The Consolidated Annual Performance and Evaluation Report (CAPER) provides information on the activities funded within a program year. The City has identified the following strategies for the five-year Consolidated Plan:

1. Economic Development
2. Housing Rehabilitation
3. Land Acquisition
4. Public Facilities and Improvements
5. Public Services.

Land Acquisition Program

This program assists with the purchase of real property for development of new, affordable housing developments for non-profit organizations such as Habitat for Humanity or Homes First!

[CDBG Plans and Reports](#)

- [PY 2018 Annual Action Plan / PY 2018 Citizen's Summary](#) (Sept 1, 2018 - Aug 31, 2019)
- [2018-2022 Regional Consolidated Plan Draft / 2018-2022 Citizen's Summary Draft](#)
- [PY 2013-2017 CDBG Consolidated Plan](#) (17 MB) / [PY 2013-2017 Citizen's Summary](#)
- [PY 2017 CAPER](#) (Submitted to HUD on November 14, 2018)
- [PY 2017 Annual Action Plan / PY 2017 Citizen's Summary](#) (Sept 1, 2017 - Aug 31, 2018)
- [PY 2016 CAPER](#) (Submitted to HUD on November 15, 2017)
- [PY 2016 Action Plan Projects-Amended](#)

- [PY 2016 Annual Action Plan / PY 2016 Citizen's Summary](#) (Sept 1, 2016 - Aug 31, 2017)
- [PY 2015 Annual Action Plan / PY 2015 Citizen's Summary](#) (Sept 1, 2015 - Aug 31, 2016)
- [PY 2015 CAPER](#) (Submitted to HUD on November 15, 2016)
- [PY 2014 Annual Action Plan](#) (Sept 1, 2014-Aug 31, 2015)
- [PY 2014 CAPER](#)
- [PY 2013 Action Plan Projects-Amended](#)
- [PY 2013 CAPER](#)
- [PY 2010-2012 CDBG Consolidated Plan / PY 2010-2012 Citizen's Summary Guide](#)
- [PY 2012 Annual Action Plan](#) (Sept 1, 2012 - August 31, 2013)
- [PY2012 CAPER](#) (Submitted to HUD on November 15, 2013)
- [PY 2011 Annual Action Plan](#) (Sept 1, 2011-Aug 31, 2012)
- [PY 2011 CAPER](#) (Submitted to HUD on November 19, 2012)
- [PY 2010 Annual Action Plan](#) (Sept 1, 2010-Aug 31, 2011)
- [PY 2010 CAPER](#) (Submitted to HUD on November 15, 2011)
- [PY 2005-2009 CDBG Consolidated Plan](#)
- [PY 2009 Annual Action Plan](#) (Sept 1, 2009-Aug 31, 2010)
- [PY 2009 CAPER](#)
- [PY 2008 Annual Action Plan](#) (Sept 1, 2008-Aug 31, 2009)
- [PY 2008 CAPER](#)
- [2006 Fair Housing Analysis of Impediments](#)

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The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources.



City Council

Approval of a Resolution Changing Designated Plan Coordinator for City's Deferred Compensation Plan from Finance Director to Human Resources Director

Agenda Date: 1/12/2021
Agenda Item Number: 4.G
File Number:21-0007

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Changing Designated Plan Coordinator for City's Deferred Compensation Plan from Finance Director to Human Resources Director

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve changing the designated plan coordinator for the City's Deferred Compensation plan from the Finance Director to the Human Resources Director.

Report

Issue:

Whether to approve changing the designated plan coordinator for the City's Deferred Compensation plan from the Finance Director to the Human Resources Director.

Staff Contact:

Linnaea Jablonski, Human Resources Director, 360.753.8309

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Due to the City's 2020 reorganization and the restructure of certain duties, the City desires to change the position designated as the Plan Coordinator for the City's Deferred Compensation Plan. The resolution is attached for Council consideration.

Neighborhood/Community Interests (if known):

N/A

Options:

1. Move to approve the resolution.
2. Do not approve the resolution.

Financial Impact:

There is no financial impact.

Attachments:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
CHANGING THE DESIGNATED PLAN COORDINATOR FOR THE CITY'S DEFERRED
COMPENSATION PLAN FROM THE FINANCE DIRECTOR TO THE HUMAN RESOURCES
DIRECTOR**

WHEREAS, Resolution No. M-1165 dated December 6, 1983, established a deferred compensation plan for the City of Olympia to be administered by the ICMA Retirement Corporation; and

WHEREAS, Resolution M-1165 designated the position of Finance Director as the City's Plan Coordinator for the Deferred Compensation Plan; and

WHEREAS, due to the City's 2020 reorganization and the restructure of certain duties, the City Council desires to change the position designated as the Plan Coordinator for the City's Deferred Compensation Plan to the position of Human Resources Director;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Human Resources Director shall be the Plan Coordinator for the City of Olympia Deferred Compensation Plan; shall receive reports, notices, etc., from ICMA Retirement Corporation or VantageTrust; shall cast, on behalf of the City of Olympia, any required votes under VantageTrust; and may delegate any administrative duties relating to the Plan to appropriate City departments and staff.
2. The Human Resources Director is hereby authorized to execute all necessary agreements with ICMA Retirement Corporation incidental to the administration of the City of Olympia Deferred Compensation Plan.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY



City Council

Approval of a Resolution Authorizing a Grant and Loan Agreement with Department of Ecology for the Purchase and Operation of a Second Street Sweeper

Agenda Date: 1/12/2021
Agenda Item Number: 4.H
File Number:21-0033

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Authorizing a Grant and Loan Agreement with Department of Ecology for the Purchase and Operation of a Second Street Sweeper

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a Resolution authorizing the City to execute a Washington State Department of Ecology grant and loan to fund a second street sweeper and authorizing the City Manager to sign the grant and loan agreements.

Report Issue:

Whether to approve a Resolution authorizing the execution of a water quality grant and loan to fund a second street sweeper.

Staff Contact:

Sue Barclift, Senior Stormwater Program Specialist, Public Works Water Resources, 360.570.3805

Presenter:

None - Consent Calendar Item.

Background and Analysis:

Resolution M-2076, signed December 17, 2019, authorized the Storm and Surface Water Utility to pursue a Washington State Department of Ecology Water Quality Financial Assistance Grant partnered with a Clean Water State Revolving Fund Loan. The loan fulfills the grant's 25 percent matching funds requirement. The grant and loan will fund the purchase and operation of a second street sweeper focused on sediment removal.

The Storm and Surface Water Utility applied for and has been awarded a Water Quality Financial

Assistance Grant and has been approved for a Clean Water State Revolving Fund Loan. Both the grant and loan have five-year terms with a grant requirement to sustain the program for an additional three years, for a total of eight years.

A second street sweeper is included in the City's 2021-2026 Capital Facilities Plan (CFP) and a new 0.5 full time employee (FTE) is in the 2021 budget for a street sweeper operator.

Ecology requires a signed resolution from the City Council before they will finalize and release the grant and loan agreement to the City. The resolution gives the City authority to sign the agreement once received by Ecology. No further Council approval is required for the execution of the Water Quality Financial Assistance Grant and the Clean Water State Revolving Fund Loan agreement.

Neighborhood/Community Interests (if known):

Projects to improve water quality have consistently received the support of the Utility Advisory Committee and the community.

Options:

1. Approve a Resolution authorizing the City to execute a Washington State Department of Ecology grant and loan to fund a second street sweeper and authorizing the City Manager to sign the grant and loan agreements. The City receives financial assistance in the form of a grant to offset planned expenditures for the purchase and operation of a second street sweeper.
2. Do not approve a Resolution authorizing the City to execute a Washington State Department of Ecology grant and loan to fund a second street sweeper. The City will not receive financial assistance and would need to evaluate an increase to stormwater utility rates to fund the second sweeper.

Financial Impact:

The total cost for the eight-year water quality enhanced street sweeping program is \$2,044,055. Receiving the Ecology grant and loan opportunity brings the program costs for the City to \$947,998. Storm and Surface Utility rates will cover the City's portion of the program costs.

Attachment:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING THE EXECUTION OF A WATER QUALITY COMBINED FINANCIAL ASSISTANCE GRANT AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY IN THE AMOUNT OF \$1,096,058 AND AUTHORIZING THE EXECUTION OF A CLEAN WATER STATE REVOLVING FUND LOAN, IN THE AMOUNT OF \$365,353, FOR THE PURCHASE AND OPERATION OF A SECOND STREET SWEEPER OVER A FIVE YEAR TERM; AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN THE GRANT AGREEMENT AND LOAN AGREEMENT ON BEHALF OF THE CITY OF OLYMPIA; AGREEING TO THE TERMS OF THE DEPARTMENT OF ECOLOGY GRANT AND AGREEING TO THE TERMS OF THE CLEAN WATER STATE REVOLVING FUND LOAN.

WHEREAS, Resolution M-2076, signed December 17, 2019, authorized the City of Olympia's Stormwater Utility to pursue the Water Quality Financial Assistance Grant offered by the Department of Ecology that includes the City providing 25% matching funds from a Clean Water State Revolving Fund Loan for purchasing and operating a second street sweeper focused on sediment removal in the Water Quality Enhanced Street Sweeping Program; and

WHEREAS, the Stormwater Utility applied for and has been awarded the Water Quality Financial Assistance Grant and has been approved for a Clean Water State Resolving Fund Loan; and

WHEREAS, The grant funding from the Department of Ecology in the amount of \$1,096,058 and the loan funding from the Department of Ecology in the amount of \$365,353 for a cumulative total of \$1,461,411 will be deposited into the Storm and Surface Water CIP Fund 434; and

WHEREAS, per Olympia Municipal Code Section 3.16.020.C, it is necessary for the City Council to approve the Grant and Loan Agreements and authorize the signature of all documents necessary to obligate funds for the Project;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the Grant Agreement between the City of Olympia and Washington State Department of Ecology for the Water Quality Enhanced Street Sweeping Program and the terms and conditions contained therein.
2. The Olympia City Council hereby approves the loan between the City of Olympia and the Department of Ecology, Clean Water State Revolving Fund for the Water Quality Enhanced Street Sweeping Program and the terms and conditions contained therein, including:
 - a. Loan amount: \$365,353
 - b. Interest rate: 0.6%
 - c. Loan term: 5 years
3. The City Manager is directed and authorized to execute on behalf of the City of Olympia the Grant Agreement, Loan Agreement, and any other documents necessary to obligate funds for the Water

Quality Enhanced Street Sweeping Program, and to make any minor modifications as may be required and are consistent with the intent of the Grant and Loan Agreements, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY



City Council

Approval of a Resolution Declaring Olympia Bee City USA

Agenda Date: 1/12/2021
Agenda Item Number: 4.I
File Number:21-0037

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Declaring Olympia Bee City USA

Recommended Action

Committee Recommendation:

Not referred to a committee

City Manager Recommendation:

Approve a resolution declaring Olympia Bee City USA.

Report

Issue:

Whether to Approve a resolution declaring Olympia Bee City USA.

Staff Contact:

Amy Stull, Park Stewardship Supervisor, Parks, Arts and Recreation, 360.753.8258

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

The Bee City USA initiative was started in 2012 by the Xerces Society in response to the concerning trend of pollinator disappearance. Currently, there are 94 Bee City USA affiliates.

Bee City USA affiliates are expected to raise awareness about pollinators, work to enhance pollinator habitat and celebrate achievements in conservation. Benefits for the participating organization include learning from others, increasing collaboration around pollinator conservation, improving local food production, less use of toxic chemicals and community involvement in removing invasive plants and planting native species.

Following designation as a Bee City USA affiliate, the City would be required to meet commitments related to the mission of Bee City USA. This includes public education, installing a Bee City USA sign, reviewing policies and plans for pollinator-friendly practices, implementing habitat enhancement

programs and adopting an integrated pest management plan that reduces pesticide use.

The Bee City USA formalizes and recognizes the City's efforts around pollinator conservation. The Habitat Work Group collaboration between Public Works Environmental Services and Park Stewardship will support the Bee City USA process and requirements. Many of the required actions are already being considered or are in process such as enhancing pollinator habitat with planting and invasive removal and reducing pesticide use.

Options:

1. Approve Bee City USA Resolution
2. Delay approval of Bee City USA Resolution
3. Don't approve Bee City USA Resolution

Financial Impact:

Additional costs for Bee City USA membership and renewal are minimal.

Attachments:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
DESIGNATING THE CITY OF OLYMPIA AS A BEE CITY USA® AFFILIATE.**

WHEREAS, the goal of Bee City USA is to promote healthy, sustainable habitats and communities for bees and other pollinators; and

WHEREAS, native bees and other pollinators are essential for a healthy ecosystem on a global and local level; and

WHEREAS, native bees and other pollinators are essential for sustainable food production on a global and local level; and

WHEREAS, bees and other pollinators have experienced population declines due to a combination of habitat loss, use of pesticides and the spread of pests and diseases; and

WHEREAS, In order to enhance understanding among local government staff and the public about the vital role that pollinators play and what each of us can do to sustain them, to foster environmental awareness and sustainability and to further mobilize community stewards, the City of Olympia chooses to support and encourage pollinator habitat creation and enhancement on both public and private land; and

WHEREAS, bee-friendly communities, such as Olympia, can benefit local and regional economies through healthy ecosystems, increased vegetable and fruit crop yields and increased demand for pollinator-friendly plant materials from local nurseries and growers; and

WHEREAS, ideal pollinator-friendly habitat:

- Provides diverse and abundant nectar and pollen from plants blooming in succession throughout the growing seasons.
- Provides clean water for drinking, nest-building, cooling, diluting stored honey and butterfly puddling.
- Is pesticide-free or has pesticide use carried out with least ill effects on pollinators.
- Is comprised of mostly, if not all, native species of annual and perennial wildflowers, shrubs, trees and grasses in ornamental landscapes because many wild pollinators prefer or depend on the native plants with which they co-evolved.
- Includes, where possible, designated pollinator zones in public spaces with signage to educate the public and build awareness.
- Provides for safe and humane removal of honey bees when required.

- Provides undisturbed spaces (leaf and brush piles, un-mowed fields or field margins, fallen trees and other dead wood) for nesting and overwintering for wild pollinators; and

WHEREAS, the City Council of the City of Olympia deems that becoming a Bee City will enhance the quality of life in Olympia;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The City of Olympia is hereby designated as a Bee City USA affiliate.
2. The City of Olympia Parks, Arts and Recreation and Public Works Departments are hereby designated as the Bee City USA sponsors.
3. The Park Stewardship and Environmental Services Program and Planning Supervisors are designated as the Bee City USA liaison.
4. Facilitation of the City of Olympia Bee City USA program is assigned to the City of Olympia staff committee known as the Habitat Working Group. The Habitat Working Group is authorized to, and should:

a. Celebration: Host at least one educational event or pollinator habitat planting or restoration each year to showcase City of Olympia’s commitment to raising awareness of pollinator conservation and expanding pollinator health and habitat.

b. Publicity & Information: Install and maintain at least one authorized Bee City USA street sign in a prominent location, and create and maintain a webpage on the City of Olympia website which includes, at minimum a copy of this resolution and links to the national Bee City USA website; contact information for the Habitat Working Group and reports of the pollinator-friendly activities the community has accomplished the previous year(s).

c. Habitat: Develop and implement a program to create or expand pollinator-friendly habitat, which includes, but is not limited to, identifying and inventorying City of Olympia’s real property that can be enhanced with pollinator friendly plantings; distributing informational or educational materials to the public; and, tracking (by square footage and/or acreage) annual area of pollinator habitat created or enhanced.

d. Pollinator-Friendly Pest Management: Retain an integrated pest management (IPM) plan designed to prevent pest problems, reduce pesticide use, and expand the use of non-chemical pest management methods.

e. Policy & Plans: Establish, through the City, a recommendation in the Parks, Arts and Recreation Plan to acknowledge and commit to the Bee City USA designation, review other applicable plans for improvements to pest management policies and practices as they relate to

pollinator conservation, identify appropriate locations for pollinator-friendly plantings, and consider other appropriate measures.

f. Renewal: After completing the first calendar year as a Bee City USA affiliate, each February, apply for renewal of City of Olympia’s Bee City USA designation following the format provided by Bee City USA, including a report of the previous year’s Bee City USA activities, and paying the renewal fee based on City of Olympia’s population.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY



City Council

Approval of an Ordinance Authorizing Acceptance of a Donation by Providence Health Systems of Washington to Support Construction of Micro-Houses at the Mitigation Site

Agenda Date: 1/12/2021
Agenda Item Number: 4.J
File Number:20-1035

Type: ordinance **Version:** 1 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Authorizing Acceptance of a Donation by Providence Health Systems of Washington to Support Construction of Micro-Houses at the Mitigation Site

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve an Ordinance authorizing the City Manager to accept a \$50,000 donation from Providence Health Systems of Washington to build micro-houses at the Mitigation Site on first reading and forward to second reading.

Report

Issue:

Whether to approve an Ordinance authorizing the City Manager to accept a \$50,000 donation from Providence Health Systems of Washington to build micro-houses at the Mitigation Site.

Staff Contact:

Keith Stahley, Assistant City Manager 360.753.8227

Presenter(s):

None. Consent Calendar item.

Background and Analysis:

The City of Olympia established a mitigation site at the corner of Franklin Street and Olympia Avenue in December of 2018 in response to the local public health and homelessness crisis. The mitigation site is presently home to over 80 individuals who reside in tents as their only shelter from the elements. The City wishes to provide better shelter at the site through the use of micro-houses.

Micro-houses are very small wooden structures that were designed by the local faith community, specifically The United Churches of Olympia. Jeff Loyer, a community-minded volunteer began building these structures in his own workshop last year. Micro-houses have been set up on at least one other site in Olympia and they've proven to be a much better option for shelter than tents, particularly in our climate.

City staff recently reached out to Providence Health Systems seeking support for a micro-housing project for the City's mitigation site. Providence Health Systems agreed that it is a worthwhile project and have donated \$50,000 to the effort. In addition, staff secured project management funding of \$60,000 from Thurston County, as well as other donations and discounts for materials from Hardel Plywood and other organizations. The Port of Olympia generously offered the use of its property for building purposes.

Staff anticipates construction of the micro-houses to begin the week of December 15, 2020. Sixty micro-houses are expected to be built over the next ten weeks, with an additional ten built by the Youth Build program at New Market Skills Center.

Neighborhood/Community Interests:

None.

Options:

1. Approve the Ordinance Authorizing the City Manager to Accept the Donation of \$50,000 from Providence Health Systems of Washington
2. Do not Approve the Ordinance Authorizing the City Manager to Accept the Donation of \$50,000 from Providence Health Systems of Washington

Financial Impact:

\$50,000 for construction of micro-houses at the Mitigation Site.

Attachment:

Ordinance

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING ACCEPTANCE OF A DONATION BY PROVIDENCE HEALTH SYSTEMS OF WASHINGTON TO SUPPORT CONSTRUCTION OF MICRO-HOUSES

WHEREAS, homelessness has a significant impact on communities and requires the development of a coordinated and strategic response; and

WHEREAS, the City of Olympia established a downtown homeless mitigation site at the northwest corner of Franklin Street and Olympia Avenue in response to the homeless crises, and provided tents to individuals at that site; and

WHEREAS, the use of tents is not optimal to shield individuals from the elements; and

WHEREAS, micro-houses, small wooden structures, will provide additional shelter and security for individuals at the mitigation site; and

WHEREAS, Providence Health Systems of Washington has offered to donate to the City of Olympia an amount not to exceed \$50,000.00 for the purpose of funding construction of micro-houses for use at the City's homeless mitigation site; and

WHEREAS, pursuant to RCW 35.21.100, every city and town by ordinance may accept any money or property donated if within its powers granted by law; and

WHEREAS, pursuant to OMC 3.56.020, donations in value of \$10,000 or more shall be brought to City Council for authorization and approval by ordinance; and

WHEREAS, the Olympia City Council finds this donation of funds by Providence Health Systems of Washington is in the public interest and serves the public welfare;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Acceptance of Donation. The Olympia City Council, pursuant to RCW 35.21.100 and OMC 3.56.020, hereby accepts the donation of funds of \$50,000.00 from Providence Health Systems of Washington (the Donation).

Section 2. Terms and Conditions. The Donation shall be used for the purpose of constructing micro-houses for use at the City's homeless mitigation site.

Section 3. Authorization. The City Manager is authorized to acknowledge and accept the funds donated by Providence Health Systems of Washington and to take any other required actions to carry out the purpose of the Donation.

Section 4. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 5. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 6. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 7. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Adopting International Building Codes

Agenda Date: 1/12/2021
Agenda Item Number: 4.K
File Number:20-0935

Type: ordinance **Version:** 2 **Status:** 1st Reading-Consent

Title

Approval of an Ordinance Adopting International Building Codes

Recommended Action

Committee Recommendation:

The Land Use and Environment Committee recommends to Move to approve the attached ordinance to align with the State's adoption of the 2018 international building and property maintenance codes.

City Manager Recommendation:

Move to approve on first reading and forward to second reading the attached ordinance as recommended by the Land Use and Environment Committee.

Report

Issue:

Whether to adopt the 2018 Washington State Building Codes and local amendments to the Building Code as contained in the proposed changes to Olympia Municipal Code Chapters 16.04, 16.05, 16.06, 16.24, 16.32, 16.36, 16.44 and 16.70.

Staff Contact:

Larry Merrell, Building Official, Community Planning and Development, 360.753.8486
Kevin Bossard, Assistant Chief/Fire Marshal, 360.709.2719

Presenter(s):

None. Consent agenda item.

Background and Analysis:

On November 19, 2020 the Land Use and Environment Committee received a briefing on several proposed amendments to building codes. The Committee voted to recommend approval of the building codes as adopted by the State.

Every three years, the construction code writing organizations update their respective technical and administrative codes. Revised Code of Washington (RCW) Section 19.27 requires that cities within the State of Washington adopt certain Building, Plumbing, Mechanical, Fire, Energy and Electrical Codes as required by the Washington State Building Codes Council (SBCC). The 2018 State

Referenced Codes have been adopted and published by the SBCC and are scheduled for implementation on February 1, 2021. City staff recommends adoption of these codes by the attached ordinance, which would amend Olympia Municipal Code Chapters 16.04, 16.05, 16.06, 16.24, 16.32, 16.36, 16.44 and 16.70.

The building codes are for the purpose of establishing rules and regulations for the protection of life, environment and property through the construction, alteration, removal, demolition, use and occupancy, location and maintenance of buildings and structures.

These codes also cover the installation, repair, replacement or alteration of electrical, mechanical, and plumbing systems along with their associated equipment, appliances, fixtures, fittings and appurtenances.

Within the codes are the process and authority for issuance of permits, collection of fees and inspection of site to ascertain compliance.

Proposed Local Amendments for Consideration

In addition to adoption of the 2018 State Referenced Codes that have been adopted by the SBCC, the City of Olympia may also consider proposing local amendments to the International Codes. However, proposed local amendments do not immediately amend the International Residential Code (IRC). The City is required to submit any proposed IRC amendments in writing to the SBCC after the amendment has been adopted by ordinance of the city council. Per RCW 19.27.074, the SBCC must approve all county or city local amendments that impact single family or multifamily residential buildings before they can be enforced by the City.

The Land Use and Environment Committee recommends several local amendments, which are included in the attached ordinance:

- 1) Adoption of optional IRC Appendix Q, "Tiny Homes". Appendix Q allows jurisdictions to allow for modified construction practices related to small tiny homes not greater than 400 sq ft.
 - o This would assist in proposals made to the City for development of smaller dwelling units. Appendix Q relaxes various requirements in the body of codes as they apply to houses that are 400 sq ft or less. Attention is specifically paid to features such as compact stairs, including stair handrails and headroom, ladders, reduced ceiling heights in lofts and guard and emergency escape and rescue opening requirements at lofts.
- 2) Maintain residential fire sprinkler requirements by adopting optional IRC Appendix U, with some modifications creating the following exceptions from this requirement for some accessory dwelling units (ADUs) and temporary or uninhabitable structures:

EXCEPTIONS:

- (a) Detached carports and greenhouses
- (b) Sheds and auxiliary structures under 200 square feet and not used for human habitation.

(c) Garage conversions to ADUs and ADUs with utilities served by an existing single-family residence that does not have an existing sprinkler system.

(d) Temporary structures specifically designed as part of an emergency housing facility permitted under Chapter 18.50 OMC, or as otherwise permitted by this Code, that serve as a temporary shelter to be removed at a future date as determined by the City of Olympia.

(e) The removal and replacement of a modular, factory built, or mobile home in similar kind based on square footage to be placed on an established mobile home or recreational vehicle park prior to January 1 of 2021.

3) Adoption of several optional appendices to the International Energy Conservation Code/Washington Residential and Commercial Energy Codes, including additional energy efficiency and renewable energy measures.
Appendix RC: Outdoor design temperatures for Washington

4) Revisions to the International Property Maintenance Code. This updates from the 2015 to the 2018 IPMC, and adds clarifications to several sections including:

a) Section 104.3 Right of entry.

b) Section 302.4. Weeds.

Neighborhood/Community Interests (if known):

As part of the code adoption process; various construction groups such as the Olympia Master Builders and the Building Industry Association Washington, which include a number of local contracting members, have expressed interest in the upcoming codes. Staff is working with these organizations and design professionals to ensure there is an understanding of the upcoming revisions to the codes as they are adopted. Staff has addressed these interests by ensuring the City of Olympia engages in outreach and invitation to these groups to attend the same training our staff attends; we have in turn been invited to their training. Additionally, the City's website will be updated to ensure there is information available pertaining to these newly adopted codes.

Options:

- 1) Approve the ordinance before February 1, 2021.
- 2) Modify the ordinance with specified revisions to the proposed local amendments before February 1, 2021.
- 3) Do not approve the ordinance.

Financial Impact:

The associated fiscal impact is included in department budget for 2021.

Attachments:

Ordinance

SBCC Summary of Significant 2018 I-Code Changes
WA State Energy Code Summary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING CERTAIN SECTIONS OF OLYMPIA MUNICIPAL CODE TITLE 16, BUILDING CODE REGULATIONS, BY REPEALING EXISTING INTERNATIONAL CODES AND ADOPTING NEW INTERNATIONAL CODES AS ADOPTED AND AMENDED BY THE STATE OF WASHINGTON AND THE CITY OF OLYMPIA, AND MAKING OTHER TECHNICAL AMENDMENTS

WHEREAS, the State of Washington requires cities to enact building codes and regulations and to provide for their administration, enforcement, and amendment; and

WHEREAS, the regulation of building and building construction by the City of Olympia (the "City") is necessary to protect the public health, safety, and welfare; and

WHEREAS, the Olympia City Council desires to protect the safety and welfare of the citizens of the City through regulation of construction activities and maintenance of buildings in the City; and

WHEREAS, the City has previously adopted multiple international codes; and

WHEREAS, more recent international codes have been adopted by the State of Washington; and

WHEREAS, the City is required by the Revised Code of Washington (RCW) Section 19.27 to adopt the State of Washington Building Codes; and

WHEREAS, City staff has reviewed the newly adopted international codes as compared to the City's existing codes; and

WHEREAS, City staff recommends adopting the international codes provided for herein along with certain State and local amendments; and

WHEREAS, City staff presented the international codes provided for herein along with their amendments to the City of Olympia Land Use and Environment Committee; and

WHEREAS, on November 19, 2020 the Land Use and Environment Committee voted to recommend approval of the provisions regulating construction through use of the State-adopted codes set forth herein; and

WHEREAS, the Ordinance is supported by the staff report and materials associated with this Ordinance, along with other documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 16.04.020. Olympia Municipal Code Section 16.04.020 is hereby amended to read as follows:

16.04.020 Adoption of Referenced Codes – Purpose

A. Pursuant to RCW 19.27.031, the City of Olympia hereby adopts the following codes, as amended by the Washington State Building Code Council, and as thereafter amended by the City of Olympia, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, use and occupancy, location and maintenance of buildings and structures, as well as the installation, repair, replacement or alteration of electrical, mechanical, and plumbing systems along with their associated equipment, appliances, fixtures, fittings and appurtenances thereto, and providing for the issuance of permits and collection of fees, providing penalties for the violation of such codes and each and all of the regulations, provisions, conditions and terms of these code standards, rules and regulations and appendices as noted. One copy of each code shall be on file with the City Clerk and can also be accessed electronically by the following hyperlinks provided within this section.

1. International Building Code Adopted.

The ~~2015~~ 2018 Edition of the International Building Code, hereafter IBC, as adopted by the State Building Code Council in Chapter 51-50 WAC (excluding Chapter 1, Section 101.4.3 "Plumbing"; excluding Chapter 1, Section 105.2 "work exempt from permit", item 3, "Oil Derricks"; excluding Chapter 1, Section 110.3.5 "Exception"; excluding Chapter 1, Section 113, Board of Appeals), as published by the International Code Council, Inc. (ICC), including ICC A117.1-2009 "Accessible and usable buildings and facilities", and the following Appendices are hereby adopted:

~~Appendix D, Fire Districts~~

Appendix E, Supplementary Accessibility Requirements ICC A117.2009

Appendix G, Flood resistant construction-

Appendix J, Grading-

2. International Residential Code Adopted.

The ~~2015~~ 2018 Edition of the International Residential Code, hereafter IRC, as published by the International Code Council, Inc. (ICC), as adopted by the State Building Code Council in Chapter 51-51 WAC (excluding Chapter 1, Section R112, Board of Appeals, Chapter 11, and Chapters 25 through 43), except that Chapter 25, Section P2904 is adopted and the following Appendices are hereby adopted:

Appendix F Passive Radon Gas Controls

~~Appendix K, Sound transmission~~

Appendix Q, ~~Dwelling Unit Fire Sprinkler Systems~~ Tiny Houses

Appendix U, Dwelling Unit Fire Sprinkler Systems

3. International Mechanical Code Adopted.

The ~~2015~~ 2018 Edition of the International Mechanical Code, hereafter IMC, as published by the International Code Council, Inc. (ICC), as adopted by the State Building Code Council in Chapter 51-52 WAC (excluding Chapter 1, Section 109, Means of Appeals), is hereby adopted, and includes adoption of the ~~2015~~ 2018 Edition of the ANSI Z223.1/NFPA 54 National Fuel Gas Code and the ~~2014~~ 2017 Liquefied Gas Code (NFPA 58) except as otherwise specified by the adoption of referenced Codes.

4. Uniform Plumbing Code Adopted.

The ~~2015~~ 2018 Edition of the Uniform Plumbing Code, hereafter UPC, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as adopted by the State Building Code Council in Chapters 51-56 WAC, and ~~51-57 WAC (excluding Chapter 1, Section 1.2.4, Appeals, Chapter 12 and Chapter 14)~~, and the following Appendices are hereby adopted:

Appendix A, Pipe-sizing

Appendix B, Notes on combination waste/venting

Appendix I, Installation Standards

5. International Energy Conservation Code/Washington Residential and Commercial Energy Codes Adopted.

Washington State Residential Energy Code, Chapter 51-11R WAC, excluding SECTION R109 BOARD OF APPEALS

The ~~2015~~ 2018 Edition of the Washington State Residential Energy Code including referenced ~~appendix chapters~~, and the following Appendices are hereby adopted:

Washington State Commercial Energy Code, Chapter 51-11C WAC

The ~~2015~~ Edition of the Washington State Commercial Energy Code including referenced appendix chapters:

Appendix RA, Optional Energy Efficiency Measures – One Step

Appendix RB, Optional Energy Efficiency Measures – Two Step

Appendix RC, Outdoor Design Temperatures for Washington Proponent Options

6. International Energy Conservation Code/Washington Commercial Energy Codes Adopted.

Washington State Commercial Energy Code, Chapter 51-11C WAC, excluding SECTION R109 BOARD OF APPEALS

The 2018 Edition of the Washington State Commercial Energy Code and the following Appendices are hereby adopted:

Appendix A, Default Heat Loss Coefficients

Appendix B, Default Internal Load Values and Schedules

Appendix C, Exterior Design Conditions

Appendix, D, Calculation of HVAC Total System Performance Ratio

Appendix E, Renewable Energy

Appendix F, Outcome-Based Energy Budget

67. Manufactured Home Standards adopted.

The Manufactured Home Standards established by the State of Washington governing the installation of manufactured homes (as set forth in WAC Chapter 296-150M), are hereby adopted.

78. International Fire Code Adopted.

The ~~2015~~ 2018 Edition of the International Fire Code, herein IFC, as published by the International Code Council (ICC), as adopted by the State Building Code Council in Chapter 51-54 WAC (excluding Chapter 1, Section 108, Board of Appeals), and the following Appendices are hereby adopted:

Appendix B, Fire-Flow requirements for Buildings

Appendix E, Hazard Categories

Appendix F, Hazard Rankings

Appendix G, Cryogenic Fluids-Weight and Volume Equivalents

Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

Appendix I, Fire Protection Systems-Noncompliant Conditions

89. International Existing Building Code Adopted.

The ~~2015~~ 2018 Edition of the International Existing Building Code, as published by the International Code Council (excluding Chapter 1, Section 112, Board of Appeals), is hereby adopted as the Existing Building Code of the City of Olympia for regulating and governing the repair, alteration, change of occupancy, addition and relocation of existing buildings, including historic buildings, as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, conditions and term of said Existing Building Code., and the following Appendix is hereby adopted:

Appendix A, Guidelines for the Seismic Retrofit of Existing Buildings

910. ~~The-International Swimming Pool and Spa Code Adopted.~~

The ~~2015~~ 2018 International Swimming Pool and Spa Code, as published by the International Code Council (by reference in the 2018 International Building Code WAC 51.50, Section 3109 and the 2018 International Residential Code WAC 51-51, Section 38), is hereby adopted regulating the installation of pools and spas, including ANSI/APSP/ICC-7 Standards for Suction Entrapment Avoidance.

11. International Fuel Gas Code Adopted.

The 2018 International Fuel Gas Code, as published by the International Code Council, is hereby adopted as the Fuel Gas Code for the City of Olympia.

Section 2. Amendment of OMC 16.04.040. Olympia Municipal Code Section 16.04.040 is hereby amended to read as follows:

16.04.040 Amendments to the Referenced Codes

A. International Building Code Amendments. The following sections of the International Building Code (IBC), as adopted by this Ordinance, are amended to read as follows:

1. Amend Section 105.2 Work Exempt from Permit, item 1 to read: One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area is not greater than 200 square feet (18.58 m²).
2. Amend Section 105.2 Work Exempt from Permit, item 2 to read: Fences not over 6 feet (1828.8mm) high.
3. Amend Section 110.3.10 Final inspection. The final inspection is to be made after all conditions of SEPA, Hearings Examiner, Design Review, Development Engineering, Stormwater Ordinance, and the Tree, Soil and Native Vegetation Ordinance are either complied with or bonded for at a rate of 125% in addition to finish grading; and the building is completed and ready for occupancy.
4. Amend Section 111.2 Certificate issued. After the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations, which are enforced, by the Community Planning and Development Department, the Building Official shall issue a Certificate of Occupancy, which shall contain the following:
 - a. The building permit number.
 - b. The address of the structure.
 - c. The name and address of the owner or the owner's authorized agent.
 - d. A description of that portion of the structure for which the certificate is issued.
 - e. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
 - f. The name of the Building Official.
 - g. The edition of the code under which the permit was issued.
 - h. The name of the tenant, use and occupancy, in accordance with the provisions of Chapter 3.
 - i. The type of construction as defined in Chapter 6.
 - j. The design occupant load.
 - k. If an automatic sprinkler system is provided, whether the sprinkler system is required.
 - l. Any special stipulations or conditions of the building permit.
5. Add Subsection 903.2 Additional Sprinkler Requirements. There are additional sprinkler requirements in all structures or buildings where the gross square footage, basements included, exceeds 5,000 square feet, or in all structures or buildings more than three stories in height (unless other sections are more restrictive). The area and height increases specified in IBC Sections 504, 506, and 507 shall be permitted. For the purposes of this section, portions of buildings separated by a fire wall may be considered as separate buildings, except that the entire gross floor area of all floors will be used to determine fire sprinkler requirements.

In addition, in all buildings, including single family residences, where the fire perimeter access (as required under OMC 16.32.050) or access roadways for fire apparatus cannot be provided due to design and/or location, fire sprinkler systems may be required.

~~6.— Amend Section 111.2 Certificate issued. Once the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations that are enforced by the Community Planning and Development Department the Building Official shall issue a Certificate of Occupancy, that contains the following:~~

- ~~a.—The building permit number.~~
- ~~b.—The address of the structure.~~
- ~~c.—The name and address of the owner or the owner’s agent.~~
- ~~d.—A description of that portion of the building for which the certificate is issued.~~
- ~~e.—A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.~~
- ~~f.—The name of the Building Official.~~
- ~~g.—The edition of the code under which the permit was issued.~~
- ~~h.—The use and occupancy, in accordance with the provisions of Chapter 3.~~
- ~~i.—The type of construction as defined in Chapter 6.~~
- ~~j.—The design occupant load.~~
- ~~k.—If an automatic sprinkler system is provided, whether the sprinkler system is required.~~
- ~~l.— Any special stipulations or conditions of the building permit.~~

B. International Residential Code Amendments. The following sections of the International Residential Code (IRC), as adopted by this Ordinance, are amended to read as follows:

1. Amend Section R105.2 Work Exempt from Permit, item 2 to read: Fences not over 6 feet (1828.8mm) high.
2. Amend Section R110.3 Certificate issued. After the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations, which are enforced, by the Community Planning and Development Department, the Building Official shall issue a Certificate of Occupancy, which shall contain the following:
 - a. The building permit number.
 - b. The address of the structure.
 - c. The name and address of the owner or the owners authorized agent.
 - d. A description of that portion of the structure for which the certificate is issued.
 - e. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
 - f. The name of the Building Official.
 - g. The edition of the code under which the permit was issued.

- h. The use and occupancy.
 - i. The type of construction as defined in Chapter 6 of the International Building Code.
 - j. The design occupant load.
 - k. If an automatic sprinkler system is provided, whether the sprinkler system is required.
 - l. Any special stipulations or conditions of the building permit.
3. Amend Table R301.2 (a), Climatic and Geographic Design Criteria, as follows:

Climatic and Geographic Design Criteria

IRC Table R301.2(1)

SUBJECT TO DAMAGE FROM										
ROOF SNOW LOAD	WIND SPEED (mph)	SEISMIC DESIGN CATEGORY	Weathering	Front Line Depth	Termite	WINTER DESIGN TEMP (Degrees)	ICE SHIELD UNDER-LAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX (degrees)	MEAN ANNUAL TEMP (degrees)
25	110	D1	Moderate	12"	Slight to Moderate	17	No	Sept. 1, 2016	170	51

4. Add Section R313.2 Automatic Sprinkler System Requirements. A fully automatic residential fire sprinkler system shall be designed, installed, tested and maintained per N.F.P.A. (National Fire Protection Association) 13, current edition, RCW 18.160 and the approval of the Fire Chief, in all structures subject to this code pursuant to Section R101.2 (including additions and alterations to structures with existing sprinkler systems).

Section 3. Amendment of OMC 16.04.000. Olympia Municipal Code Section 16.04.000 is hereby amended to read as follows:

**Chapter 16.04
BUILDING CODES**

16.04.000 Chapter Contents

Sections:

Article I. BUILDING CODES

- 16.04.010 The "Building Code."
- 16.04.020 Adoption of Referenced Codes -- Purpose.
- 16.04.030 General Requirements for all Referenced Codes.
- 16.04.040 Amendments to the Referenced Codes.
- 16.04.050 Duties and Powers of Building Official -- General.
- 16.04.060 Building Codes, Appeals.
- 16.04.070 Violations, Penalties and Nuisance.

Article II. ~~FIRE DISTRICT RESERVED~~

~~16.04.110 Ordinance Creating and Establishing a Fire District.~~

Article III. RESERVED

Article IV. FLOATING BOAT MOORAGE

- 16.04.160 Purpose of regulations.
- 16.04.170 Applicability.
- 16.04.180 Content generally.
- 16.04.190 Definitions.
- 16.04.200 Permit required for construction.
- 16.04.220 Construction materials.
- 16.04.230 Size, spacing and fire protection requirements.
- 16.04.240 Fueling facility requirements.

Article V. RESERVED

Article VI. MOBILE/MANUFACTURED HOUSING

- 16.04.390 Definitions.
- 16.04.400 Incorporation of certain WAC provisions -- Nonconforming housing.
- 16.04.410 Installation permit required -- Smoke detectors required when.
- 16.04.430 Electrical connection permit.
- 16.04.440 Plumbing permit.
- 16.04.450 Permit expiration -- Extension.
- 16.04.460 Use of mobile housing for nonresidential purposes.

Article VII. FLOODPLAIN DEVELOPMENT

- 16.04.500 Floodplain Development.

Section 5. Amendment of OMC 16.05.040. Olympia Municipal Code Section 16.05.040 is hereby amended to read as follows:

16.05.040 Sprinkler Protection

The building shall be protected throughout by an automatic sprinkler system complying with the International Building Code and Section 903.3.1.1 (NFPA 13) as contained in the ~~2009~~ 2018 International Building Code and as may be further modified by Chapter 16.40. The automatic sprinkler system shall not substitute for one-hour fire-resistive construction.

The sprinkler system shall be fitted with residential sprinkler heads in addition to providing areas of refuge (AOR) at required exits that are not grade accessible.

Section 6. Amendment of OMC 16.06.010. Olympia Municipal Code Section 16.06.010 is hereby amended to read as follows:

16.06.010 International Property Maintenance Code adopted –Purpose and Administration

A. PURPOSE

The International Property Maintenance Code, ~~2015~~ 2018 edition, as published by the International Code Council, and herein amended by the City of Olympia, is hereby adopted as the Property Maintenance Code of the City of Olympia for the following purposes: (1) regulating and governing the conditions and maintenance of all property, buildings, and structures; (2) providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; (3) authorizing the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; and (4) providing for the issuance of permits and collection of fees therefore, and each and all of the regulations, provisions, penalties, conditions and terms referred to, adopted, and made a part hereof, as fully set out in this Ordinance.

B. ADMINISTRATION - GENERAL

101.1 Title. These regulations shall be known as the Property Maintenance Code of the City of Olympia, hereinafter referred to as "this code."

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and shall constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, a reasonable level of safety from fire and other hazards, and for a reasonable level of sanitary maintenance; the responsibility of owners, an owner's authorized agent, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

C. APPLICABILITY

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern. Where there is a conflict between general requirements and specific requirements, the specific requirements shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code, or a previous regulation or code under which the structure or premises was constructed, altered or repaired, shall be maintained in good working order. No owner, owner's authorized agent, operator or occupant shall cause any service, facility, equipment or utility that is required under this section to be removed from, shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

Except as otherwise specified herein, the owner or the owner's authorized agent shall be responsible for the maintenance of buildings, structures and premises.

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, Uniform Plumbing Code, and NFPA 70 (the currently adopted edition of the National Electrical Code). Nothing in this code shall be construed to cancel, modify or set aside any provision of the City of Olympia Municipal Code.

Except as otherwise specifically stated, where conflicts occur within this Property Maintenance Code, or between the provisions of this Property Maintenance Code and the Building Code, Fire Code, Existing Building Code, Energy Code, Residential Code, Electrical Code, Zoning Code, or other regulations of the City, the more restrictive shall apply.

102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

102.5 Artisan-ship. Repairs, maintenance work, alterations or installations that are caused directly or indirectly by the enforcement of this code shall be executed and installed in an artisan-like manner and installed in accordance with the manufacturer's installation instructions.

102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the ~~code~~ official-Code Official to be safe and in the public interest of health, safety and welfare.

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Section 16.06.080 and considered part of the requirements of this code to the prescribed extent of each such reference.

102.7.1 Conflicts. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

102.7.2 Provisions in referenced codes and standards. Where there is conflict among this code and a referenced code or standards, the provisions of this code govern.

102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health, and general welfare, not specifically covered by this code, shall be determined by the ~~code-official~~ Code Official or the Code Official's duly authorized representative.

102.9 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

102.10 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

D. PROPERTY MAINTENANCE INSPECTION

103.1 General. The Community Planning and Development Department is responsible for property maintenance inspection.

103.2 Appointment. The Code Official shall be appointed by the appointing authority. The Director of the Community Planning and Development Department shall be the appointing authority for the Department.

103.3 Code Official. ~~In accordance with the prescribed procedures of this jurisdiction, the Code Official shall appoint other related technical officers, inspectors and other employees as delegated by the appointing authority the City, and with concurrence of the appointing authority, the Code Official may appoint one or more deputies, to be known as Code Enforcement Officers. Such Code Enforcement Officers have powers as delegated by the Code Official.~~

103.4 Liability. The Code Official, the Hearing Examiner, Code Enforcement Officers, and employees charged with the enforcement of this code, while acting for the City in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, may not be held civilly or criminally liable personally, and are hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as set forth in Olympia Municipal Code Section 4.36.010 (Building Code review and permit fees) as currently enacted or as amended.

E. DUTIES AND POWERS OF THE CODE OFFICIAL

104.1 General. ~~The code official~~ Code Official and Code Enforcement Officers shall enforce the provisions of this code. ~~The code official~~ Code Official shall have authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

104.2 Inspections. ~~The code official~~ Code Official and Code Enforcement Officers shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. ~~The code official is~~ Code Official and Code Enforcement Officers are authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.2.1 Initial Inspection and Enforcement. An initial enforcement inspection shall be undertaken against buildings or properties whenever the ~~code official~~ Code Official or Code Enforcement Officer has reason to believe that a violation of this code exists; or a complaint is filed with the department by any person.

104.3 Right of entry. ~~The code official is~~ Code Official and Code Enforcement Officers are authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, ~~the code official is~~ Code Official or Code Enforcement Officer is authorized to pursue recourse as provided by law. Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the Code Official or Code Enforcement Officer has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the Code Official or Code Enforcement Officer is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied, the Code Official or Code Enforcement Officer shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the Code Official or Code Enforcement Officer shall first make reasonable effort to locate the owner, owner's authorized agent, or other person having charge or control of the structure or premises and request entry. If entry is refused, the Code Official or Code Enforcement Officer may utilize the remedies provided by law to secure entry.

104.4 Identification. The ~~code official~~ Code Official and Code Enforcement Officers shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.5 Notices and orders. The ~~code official~~ Code Official and Code Enforcement Officers shall issue all necessary notices or orders to ensure compliance with this code.

104.6 Department records. The ~~code official~~ Code Official and Code Enforcement Officers shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall must be retained in the official records for the period required for retention of public records.

F. APPROVAL

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the ~~code official shall have the authority to~~ Code Official may grant modifications for individual cases upon application of the owner or owner's authorized agent, provided the ~~code official~~ Code Official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code, and that such modification does not lesson health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative material or method of construction has been approved and complies with all other codes adopted by the City of Olympia. An alternative material or method of construction shall be approved where the ~~code official~~ Code Official finds that the proposed design is satisfactory and complies with all other codes adopted by the City of Olympia and the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the ~~code official~~ Code Official shall respond in writing, stating the reasons the alternate was not approved.

105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the ~~code official~~ Code Official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

105.3.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the ~~code official~~ Code Official shall be permitted to approve appropriate testing procedures performed by an approved agency.

105.3.2 Test reports. Reports of tests shall be retained by the ~~code official~~ Code Official for the period required for retention of public records.

105.4 Material and equipment reuse. The use of used materials that meet the requirements of this code for new materials is permitted. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved by the ~~code official~~ Code Official.

105.5 Approved materials and equipment. Materials, equipment and devices approved by the ~~code official~~ Code Official shall be constructed and installed in accordance with such approval.

105.6 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

G. VIOLATIONS

106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

106.2 Notice of violation. The ~~code official~~ Code Official shall serve a notice of violation or order in accordance with Section 107.

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be subject to the following:

a. On first offense, the violation shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000), and/or imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment.

b. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this title or the terms or provisions of a Notice of Violation issued under OMC Chapter 16.06. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

i. First offense: Class 3 (\$50), not including statutory assessments.

ii. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.

iii. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

c. If the notice of violation is not complied with, the ~~code official~~ Code Official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. The costs of any action taken by the City of Olympia on such premises, including but not limited to attorney's fees, contractors, engineers and all other costs of any kind, shall be charged against the real property upon which the structure is located and shall be a lien on such real property in accordance with the procedures set forth in Section 110.3 of this code.

106.4 Violation penalties. Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation

or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

H. NOTICES AND ORDERS

107.1 Notice to person responsible. Whenever the ~~code official~~ Code Official or Code Enforcement Officer determines that there has been a violation of this code or has grounds to believe that a violation has occurred, ~~notice shall be given the Code Official or Code Enforcement Officer shall give notice~~ in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or owner's authorized agent of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

If the whereabouts of any of such person is unknown and the same cannot be ascertained by the ~~code official~~ Code Official or Code Enforcement Officer in the exercise of reasonable diligence, and the ~~code official~~ Code Official or Code Enforcement Officer makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building involved in the proceedings, and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.

107.5 Unauthorized tampering. Signs, tags, or seals posted or affixed by the ~~code official~~ Code Official or Code Enforcement Officer shall not be mutilated, destroyed or tampered with, or removed without authorization from the ~~code official~~ Code Official or Code Enforcement Officer.

~~107.6 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.~~

107.7~~6~~ Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of

the compliance order or notice of violation have been complied with, or until such owner or the owner's authorized agent ~~shall first~~ furnishes the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the ~~code official~~ Code Official and shall furnish to the ~~code official~~ Code Official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

I. UNSAFE STRUCTURES AND EQUIPMENT

108.1 General. When a structure or equipment is found by the ~~code official~~ Code Official or their designee to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, healthy, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the ~~code official~~ Code Official or their designee finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

108.1.5 Dangerous structure or premises. For the purpose of this code, any structure or premises that have any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one-half the original design value.

5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal of movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its intended use and occupancy.
7. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to enter the building or structure for committing a nuisance or an unlawful act.
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing systems, or otherwise is determined by the ~~code official~~ Code Official or their designee to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical systems, plumbing system or other cause, is determined by the ~~code official~~ Code Official or their designee to be a threat to life or health.
11. Any portion of a building remains on site after the demolition or destruction of the building or structure or whenever the building of any structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

108.2 Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the ~~code official~~ Code Official or their designee is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner or owner's authorized agent to close up the premises within the time specified in the order, the ~~code official~~ Code Official or their designee shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and such costs will be recoverable pursuant to the provisions of this code.

108.2.1 Authority to disconnect service utilities. The ~~code official~~ Code Official or their designee shall have the authority to authorize disconnections of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in section 102.3 in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The ~~code official~~ Code Official or their designee shall notify the serving utility and, whenever possible, the owner or owner's authorized agent and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner, owner's authorized agent or occupant of the building or structure or service system shall be notified in writing as soon as practical thereafter.

108.3 Notice. Whenever the ~~code official~~ Code Official or their designee has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner, owner's authorized agent or the person or persons responsible for the structure or equipment in accordance with Sections 107.1, 107.2 and 107.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

108.4 Placarding. Upon failure of the owner, owner's authorized agent or person responsible to comply with the notice provisions within the time given, the ~~code official~~ Code Official or their designee shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

108.4.1 Placard removal. The ~~code official~~ Code Official or their designee shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the ~~code official~~ Code Official shall be subject to the penalties provided by this code.

108.5 Prohibited occupancy. Any occupied structure condemned and placarded by the ~~code official~~ Code Official their designee shall be vacated as ordered by the ~~code official~~ Code Official or their designee. Any person who shall occupy placarded premises or shall operate placarded equipment, and any owner, owner's authorized agent or person responsible for the premises who shall let anyone occupy placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

108.6 Abatement methods. The owner, owner's authorized agent, operator or occupant of a building, premises or equipment deemed unsafe by the ~~code official~~ Code Official or their designee shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action.

108.7 Record. The ~~code official~~ Code Official or their designee shall file a report of investigation of unsafe conditions stating the occupancy of the structure and the unsafe condition.

J. EMERGENCY MEASURES

109.1 Imminent danger. When, in the opinion of the ~~code official~~ Code Official or their designee, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the ~~code official~~ Code Official or their designee is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The ~~code official~~ Code Official or their designee shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the ~~code official~~ Code Official or their designee, there is imminent danger due to an unsafe condition, the ~~code official~~ Code Official their designee shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the ~~code official~~ Code Official or their designee deems necessary to meet such emergency.

109.3 Closing streets. When necessary for public safety, the ~~code official~~ Code Official or their designee shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

109.4 Emergency repairs. For the purposes of this section, the ~~code official~~ Code Official or their designee shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

K. DEMOLITION

110.1 General. The ~~code official~~ Code Official or their designee shall order the owner or the owner's authorized agent of any premises upon which is located any structure, which in the ~~code official's~~ Code Official's or their designee's or owner's authorized agent judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that is unreasonable to repair the structure, to demolish and remove such structure; and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years that the building or structure has become dangerous as defined in this code, the ~~code official~~ Code Official or their designee shall order the owner or owner's authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the ~~code official~~ Code Official or their designee.

110.2 Notices and orders. All notices and orders shall comply with Section 107.

110.3 Failure to comply. If the owner of a premises or owner's authorized agent fails to comply with a demolition order within the time prescribed, the ~~code official~~ Code Official or their designee shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

If the party responsible under Section 102.2, or other sections of this Code, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building structure or premises, the ~~code official~~ Code Official or their designee may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished.

The amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the ~~code official~~ Code Official or their designee, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Upon certification by the Clerk of the City of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in Revised Code of Washington 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the Building Demolition and Nuisance Abatement revolving fund of the City.

The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

110.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

L. MEANS OF APPEAL

111. Means of Appeal. Any person adversely affected or aggrieved by a decision of the ~~code official~~ Code Official or their designee or a notice or order issued under this code may appeal to the hearings examiner pursuant to the Olympia Municipal Code Chapter 18.75, provided that a written application for appeal is filed within fourteen (14) days after the day the decision, notice or order was served. An appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Section 7. Amendment of OMC 16.06.020.B. Olympia Municipal Code Subsection 16.06.020.B is hereby amended to read as follows:

16.06.020 Definitions

B. GENERAL DEFINITIONS

1. Anchored. Secured in a manner that provides positive connection.
2. Approved. Approved by the ~~code official~~ Code Official.
3. Basement. That portion of a building which is partly or completely below grade.
4. Bathroom. A room containing plumbing fixtures, including a bathtub or shower.
5. Bedroom. Any room or space used or intended to be used for sleeping purposes, in either a dwelling or sleeping unit.
6. Code Official. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.
7. Condemn. To adjudge unfit for occupancy.
8. Cost of such demolition or emergency repairs. The cost of shall include the actual costs of the demolition or repair of the structure less revenues obtained if salvage was conducted prior to the demolition or repair. Costs shall include, but not be limited to, expenses incurred or necessitated related to the demolition or emergency repairs, such as asbestos survey and abatement if necessary; costs of inspectors, testing agencies or experts retained relative to the demolition or emergency repairs; costs of testing; surveys for other materials that are controlled or regulated from being dumped in a landfill; title searches; mailing(s); postings; recording; and attorney fees expended for recovering of the cost of emergency repairs or to obtain or enforce an order of demolition made by a ~~code official~~ Code Official, the governing body or board of appeals.
9. Department. The City of Olympia Community Planning and Development Department.

10. Detached. When a structure element is physically disconnected from another and that connection is necessary to provide a positive connection.
11. Deterioration. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.
12. Director. The Director of the City of Olympia Community Planning and Development Department.
13. Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
14. Easement. That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots.
15. Equipment Support. Those structural members or assemblies of members or manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.
16. Exterior Property. The open space on the premises and on adjoining property under the control of owners or operators of such premises.
17. Garbage. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.
18. Guard. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.
19. Habitable Space. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.
20. Historic Building. Any building or structure that is one or more of the following:
 1. Listed or certified as eligible for listing, by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, in National Register of Historic Places.
 2. Designated as historic under an applicable state or local law.
 3. Certified as a contributing resource within National Register or state or locally designated historic structure.
21. Housekeeping Unit. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.
22. Imminent Danger. A condition which could cause serious or life-threatening injury or death at any time.
23. Infestation. The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.
24. Inoperable Motor Vehicle. A vehicle which cannot be driven upon the public streets for reason including, but not limited to, being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

25. Labeled. Equipment, materials or products to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and whose labeling either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.
26. Let For Occupancy or Let. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.
27. Neglect. The lack of proper maintenance for a building or structure.
28. Occupancy. The purpose for which a building or portion thereof is utilized or occupied.
29. Occupant. Any individual living or sleeping in a building, or having possession of a space within in a building.
30. Openable Area. That part of window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.
31. Operator. Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.
32. Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
33. Person. An individual, corporation, partnership or any other group acting as a unit.
34. Pest Elimination. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food or water; by other approved pest elimination methods.
35. Premises. A lot, plot or parcel of land, easement or public way, including any structures thereon.
36. Public Way. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.
37. Rooming House. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.
38. Rooming Unit. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.
39. Rubbish. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

40. Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
41. Strict Liability Offense. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.
42. Structure. That which is built or constructed or a portion thereof.
43. Tenant. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.
44. Toilet room. A room containing a water closet or urinal, but not a bathtub or shower.
45. Ultimate deformation. The deformation at which failure occurs and which shall be deemed to occur if the sustainable load reduces to 80 percent or less of the maximum strength.
46. Ventilation. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.
47. Artisanlike. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.
48. Yard. An open space on the same lot with a structure.
49. Weeds. Weeds means all grasses, annual plants, and vegetation, other than trees or shrubs; provided, however, this term does not include cultivated flowers and gardens.

Section 8. Amendment of OMC 16.06.030.B. Olympia Municipal Code Subsection 16.06.030.B is hereby amended to read as follows:

16.06.030 General Requirements

B. EXTERIOR PROPERTY AREAS

302.1 Sanitation. Exterior property and premises shall be maintained in a clean, safe, and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

302.2 Grading and Drainage. Premises shall be graded and maintained to prevent erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

EXCEPTION: Approved retention areas and reservoirs.

302.3 Sidewalks and driveway. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.4 Weeds, brush, bushes or shrubs, and other vegetation. All property owners, and all persons in control of property, shall keep all exterior property areas, including the planting strip, free from blight and from overgrowth in excess of 12 inches in height, including but not limited to lawn grass, plants, nuisance weeds, blackberries, and other vegetation. All noxious weeds identified on the Thurston County Noxious Weed Control list are prohibited. After service of a notice of violation, a person violating this subsection is subject to OMC 16.06.010, Section 106.3. Upon failure by the property owner or person in control of property to comply with the notice of violation, any duly authorized employee of the City or contractor

hired by the City is authorized to enter upon the property in violation and remove the grass, brush, bushes, noxious weeds, nuisance weeds, etc. growing thereon, and the property owner or person in control of the property shall pay the costs of such removal.

EXCEPTION: Agricultural areas within the City of Olympia (crops, livestock, farming, etc.) are exempt from this subsection.

302.5 Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

302.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

302.7 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

302.8 Motor Vehicles. Except as provided for in other regulations, no inoperative or unlicensed vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. For purposes of this section "vehicle" is defined in the Revised Code of Washington Section 46.04.670.

EXCEPTION: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

302.9 Defacement of property. No person shall willfully or wantonly damage, mutilate, or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving, or graffiti.

It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

302.10 Recreational vehicles or other vehicles. No recreational vehicle as defined by the Olympia Municipal Code Chapter 18.02.180 or other vehicles shall be used for the purpose of living, sleeping, cooking or any similar use while parked on publicly owned or private property.

302.11 Cargo containers and semi-trailers.

302.11.1 Cargo containers, except as otherwise permitted by Olympia Municipal Code Title 18 shall not be permitted to be used as storage buildings. Cargo containers which are permitted by the land use regulatory code to be used as storage buildings shall be provided with a foundation system that provides adequate clearance from the ground to prevent deterioration and shall be provided with an anchorage system to prevent sliding or overturning by wind or seismic forces prescribed by the building code.

302.11.2 Semi trailers shall not be used as storage buildings.

302.12 Additional nuisances.

- A. Causing or allowing any human or animal waste, poison, poison oak or ivy, or noxious substance to be collected or to remain in any place, street, highway, or alley in the City in a manner which is reasonably offensive to the public; or
- B. Obstructing or encroaching upon or rendering unsafe for passage any public highway, private way, street, sidewalk, trail, alley, park, square, driveway, lake, or stream in the City; or
- C. Excavating or maintaining on public or private property any hole, excavation or pit which is reasonably dangerous to the public or adjacent property.

302.13 Swimming pools. A property owner or person in control of property shall maintain any swimming pools pursuant to the Swimming Pool Spa and Hot Tub Code, state building codes, and other applicable federal, state, and local laws. A property owner or person in control of property shall maintain any swimming pool in a clean and sanitary condition and in good repair.

Section 9. Amendment of OMC 16.24.020. Olympia Municipal Code Section 16.24.020 is hereby amended to read as follows:

16.24.020 Adoption of National Electrical Code Article 80

The National Electrical Code (NEC) is amended and supplemented by the addition of a new Article to be known as Article 80 – Adoption, to read as follows:

Article 80 - Adoption

80.1 Short Title. These regulations ~~shall be~~ are known as the City of Olympia Electrical Code and ~~shall~~ must be cited as such and will be referred to herein as "this Code."

80.3 Washington Cities Electrical Code Adopted. The Washington Cities Electrical Code (WACEC) is hereby adopted and ~~shall be~~ is applicable within the City, as amended, added to and excepted in this Code.

80.4 Conflicts. In accordance with RCW 19.28.010(3), where the State of Washington, Department of Labor and Industries adopts a more current edition of the National Electrical Code (NFPA 70), the Code Official may supplement use of the WACEC with newly adopted editions of the National Electrical Code (NEC).

Including: Part 1 adopting the ~~2008~~ 2017 NEC and other necessary codes and standards adopted by the State of Washington.

Excluding: Part 2 amending the administrative chapter of the NEC based on portions of the ICC Electrical Code, as published by the International Code Council.

Including: Part 3 amending the NEC through supplements, deletions or revisions to be equal, higher, or better than the State of Washington's rules.

Section 10. Amendment of OMC 16.32.140. Olympia Municipal Code Section 16.32.140 is hereby amended to read as follows:

16.32.140 Amendment of Section ~~903.2.7~~ 903.2.8 of the International Fire Code

OMC Section 16.32.140. Amendment of Section ~~903.2.7~~. Section ~~903.2.7~~ 903.2.8 of the International Fire Code is hereby amended to read as follows:

~~903.2.7~~ 903.2.8 Group R. Except as provided in Section ~~903.2.7.1~~ 903.2.8.1 below, an automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

~~903.2.7.1~~ 903.2.8.1. Group R-3. Automatic Sprinkler System Requirements. A fully automatic residential fire sprinkler system shall be designed, installed, tested and maintained per N.F.P.A. (National Fire Protection Association) 13D, ~~current edition~~, RCW 18.160 and the approval of the Fire Chief, ~~in all Group R-3 structures (including additions and alterations to structures with existing sprinkler systems) when:~~ The following Group R3 structures require NFPA 13D sprinkler systems:

~~(a) the structures are constructed within subdivisions in which internal streets are required to be constructed in accordance with the provisions of Chapter 4, Standard Plan 4-2J of the Engineering Design and Development Standards, as the same were amended in December, 2006, except as provided below; and~~

~~(b) the application for subdivision approval for the subdivision in which the structure is located became vested by operation of law on or after December 1, 2006.~~

a. New single family residential units of any size.

b. New Accessory Dwelling Units (ADUs) with utilities served by a residential unit that has an existing sprinkler system.

c. Any change of use to a residential structure.

d. Any structure that is being demolished and rebuilt for residential use.

e. Any structure that is adding greater than 50 percent of the existing square footage.

f. Any structure that has been damaged by fire such that greater than 50 percent of the structure is being reconstructed or is defined as substantially damaged per applicable code or as determined by the Building Official, or the Building Official's designee, or the Fire Chief, or the Fire Chief's designee.

g. Any modular, factory-built dwelling or mobile home that is being placed on an established mobile home or recreational vehicle park.

EXCEPTIONS:

a. Detached carports and greenhouses

b. Sheds and auxiliary structures under 200 square feet and not used for human habitation.

c. Garage conversions to ADU's and ADU's with utilities served by an existing single family residence that does not have an existing sprinkler system.

d. Temporary structures specifically designed as part of an emergency housing facility permitted under Chapter 18.50 OMC, or as otherwise permitted by this code, that serve as a temporary shelter to be removed at a future date as determined by the City of Olympia.

e. The removal and replacement of a modular, factory-built, or mobile home in similar kind based on square footage to be placed on an established mobile home or recreational vehicle park prior to January 1, 2021.

Section 11. Amendment of OMC 16.36.030. Olympia Municipal Code Section 16.36.030 is hereby amended to read as follows:

16.36.030 General requirements and regulations

~~Fire hydrants shall be installed in accordance with the requirements of this chapter. In addition, presently existing fire hydrants which do not conform with the requirements and standards of this chapter when replaced, shall be replaced with hydrants which do conform to the standards and requirements of this chapter. All fire hydrants shall be served by the city water system or as otherwise approved by the fire department. All hydrants shall be subject to testing, inspection and approval by the fire control division of the Olympia Fire Department. All fire hydrants must be served by the city water system in accordance with OMC Chapter 13.04 or as otherwise approved by the City Engineer and the Fire Department. All hydrants are subject to testing, inspection, and approval by the owner of each fire hydrant, in accordance with AWWA standards.~~

Section 12. Amendment of OMC 16.36.050. Olympia Municipal Code Section 16.36.050 is hereby amended to read as follows:

16.36.050 Installation requirements

The installation of all fire hydrants shall be in accordance with sound engineering practices and supplied by mains as prescribed under this chapter. In addition, the following requirements shall apply to all water main construction:

A. ~~Five copies~~A digital copy of the detailed plans or drawings, accurately indicating main size, the location of all valves, fire hydrants and thrust blocks to be installed, shall be submitted to the engineering department and fire department prior to the commencement of any construction.

B. All fire hydrants must be approved by the water superintendent or the water superintendent's designee prior to installation.

C. All construction of the fire hydrant installation and its attendant water system connection shall conform to the APWA standards or as amended by the city.

D. Fire hydrant installations shall be adequately protected against vehicular damage, in accordance with standards and specifications promulgated by the engineering department.

- E. An auxiliary gate valve shall be installed and connected to the hydrant, in accordance with standards and specifications promulgated by the engineering department to permit the repair and replacement of the hydrant without disruption of water service.
- F. All hydrants shall stand plumb, be set to the finished grade with the lowest outlet of the hydrant no less than 18" or more than 24" above the grade and have no less than 36" in diameter of clear area about the hydrant for the clearance of hydrant wrenches on both outlets and on the control valve.
- G. The pumper port shall face the street. Where the street cannot be clearly defined or recognized, the port shall face the most likely route of approach and location of the fire engine while pumping, all as determined by the fire department. The hydrant shall be installed within 15' of the street or access roadway.
- H. The hydrant lateral from the water main shall be no less than 6" in diameter when less than 50'.
- I. Hydrant spacing of 300' shall be required in commercial areas.
- J. Hydrant spacing of 300' shall be required in areas of multiple-family structures of three or more units and for single-family and duplex units built continuous with less than 10' of clearance between units.
- K. Hydrant spacing of ~~600'~~ 500' shall be required for single-family and duplex residential when there is ten or more feet of clearance between units.
- L. The Fire Department connection (FDC) shall be located to within 40 feet of the nearest fire hydrant.
- M. A maximum of ~~1,000'~~ 800' from hydrant to building will be allowed where no more than two group R division 3 or M occupancies, as specified in the Uniform Building Code, are being developed and there is ten or more feet of clearance between units.
- N. All mains servicing fire hydrants shall be a minimum of 6" in diameter when looped and 8" when said main is dead ended. Engineering calculations showing fire flow capabilities of the proposed mains at 20 psi residual must accompany all plans.
- O. All hydrants, pipes, valves, and related components shall meet the requirements of the Director of Public Works or the Director of Public Works' designee, using AWWA standards as a minimum.
- P. The Director of Public Works or the Director of Public Works' designee and the fire department shall be notified in writing of the date the fire hydrant installation and its attendant water connection service will be available for use.
- Q. The fire department shall be notified when all newly installed hydrants or mains are placed in service.

Section 13. Amendment of OMC 16.44.060. Olympia Municipal Code Section 16.44.060 is hereby amended to read as follows:

Article III. FIRE ALARM SYSTEMS

16.44.060 General regulation

A. Design. All fire alarm plans submitted for approval shall bear the designer's valid Washington State Low Voltage Specialty Electrical Contractor's License number or shall be stamped by a registered fire protection or electrical engineer.

B. Plans. All digital fire alarm system plans shall be submitted to the city for review and shall be approved prior to a permit being issued. ~~Three copies of detailed Digital~~ plans showing the location of all alarm equipment and detailed specifications on each type of device in the system shall be included and consist of the following:

1. Floor layout showing all rooms and spaces including accurate measurements ~~to a scale no smaller than 1/8" scale.~~
2. Identification of each room or space, i.e., office, lobby, attic, etc.
3. Details of ceiling height and construction type.
4. Location of each system component using the appropriate symbol.
5. Explanatory notes and legend to lend clarity to the plan and identify the manufacturer and model number of each alarm component used.
6. A wiring schematic clarifying type and size of wiring, which must comply with NFPA 70, and a point to point wiring diagram.
7. A copy of the technical specifications, to include battery calculations, for each component used in the makeup of the automatic fire alarm system. If the components are not all from the same manufacturer, UL cross listing compatibility cards are required.
8. Battery and voltage drop calculations.
9. Plans shall be submitted to the City of Olympia for review and approval prior to commencement of work.
10. Submit ~~three (3) sets of digital~~ plans and component specifications. Plans must show locations and type of each device in the system. Said plans shall ~~be floor plans to scale~~ include accurate measurements.
11. A plan check fee calculated under OMC Section 4.36.010 shall be paid to the City of Olympia at time of submittal of plans.
12. When a system is installed with automatic detection, such detection shall be provided in all rooms and areas including concealed spaces and attics. Attic spaces, above ceiling spaces, and

outside storage units on apartment buildings shall have fixed temperature detection. Automatic detection shall include the attic space of NFPA 13R sprinkled structures. Exception: Buildings protected by an approved NFPA 13 fire sprinkler system.

13. All components shall be low voltage direct current and compatible with the remainder of the system.

14. All components and wiring shall be supervised for defective devices, grounds, or breaks including annunciator, Emergency Responder Radio Coverage systems and Smoke Control systems if provided.

15. All components shall be listed by a national testing agency for the use intended.

16. All systems shall be provided with battery backup and battery charger.

17. All systems shall have a monitoring, maintenance, and testing contract, to become effective on the date of final acceptance. No final approvals will be scheduled until such contracts are received by the Olympia Fire Department.

18. All systems shall have the fire alarm control panel mounted so as to be readily visible arriving personnel or be provided with a remote annunciator. Such equipment shall be located so as to be protected from exposure to the elements.

19. All systems which are required to be extended to an alarm receiving agency shall transmit system trouble signals of any kind as well as alarms, including but not limited to: phone line supervision, battery trouble and line supervision. They shall transmit fire condition over trouble if the trouble is of such nature that it does not disable the entire system. The alarm receiving agency shall be U.L., F.M., or NFPA listed for commercial fire.

20. All systems shall have local audible trouble and audio/visual alarm signal devices. Audio/visual devices shall be sufficient in number and type to provide a minimum of 60 db in the most remote area. In commercial structures, audibility shall be ~~sufficient to be clearly heard a~~ minimum of 15 db over the ambient noise level of the area served. When the control panel is located remote to occupied areas, it shall, in addition to the panel trouble device, be provided with a remote trouble audible device in an area which is normally occupied. This device shall be labeled "Fire Alarm System Trouble."

21. Manual fire alarm stations shall be located within 5 feet of all required exits on each floor level and from the structure. Manual fire alarm stations in sprinklered buildings may be ~~deleted or the required number lessened at the discretion of the fire chief or the fire chief's designee~~ reduced to one in the sprinkler riser room and one in a constantly monitored location.

22. All alarm systems installed in a sprinklered structure shall include a zone for master water flow and shall supervise all sprinkler controlling valves. When a structure is provided with a zoned sprinkler system, the alarm shall be zoned in accordance with the sprinkler coverage zones.

23. All systems shall be inspected and tested thoroughly by the installer who shall submit a record of completion. Failure of a system to meet NFPA72 performance standards and standards found in this Chapter shall be a basis for additional inspection fees after the second final inspection.

24. All systems final acceptance is subject to wiring inspection (by electrical inspector), supervisory tests and proper functioning of all components. No Certificate of Occupancy shall be granted for the structure until satisfactory acceptance tests are accomplished.

25. Apartment buildings and townhomes that require a monitored fire alarm system shall have a ~~135-degree rate of rise (centrally located) and mini horn/strobe unit~~ single station smoke/carbon monoxide detector and horn/strobe centrally located in every unit. There shall be a low sounder in every sleep room with exception of studio apartment units. ~~Exception: a heat detector is not required in apartment units protected by approved fire sprinklers.~~

26. Smoke detectors shall be placed in all corridors and rooms which are intervening exit pathways.

27. A smoke detector shall be provided within ~~ten~~ six feet of fire alarm panel and other fire alarm control equipment which are in unattended locations.

C. Alterations and/or additions to existing systems must comply with the requirements of B above.

D. A maintenance testing agreement, signed by the building owner, shall be on record with the fire department prior to scheduling of final acceptance test.

E. Plan Check Fee. A fee equal to 65 percent of the permit fee shall be forfeited to the city at the time of submittal of plans.

F. Permit Fee. A fee equal to Table 1A of OMC 4.36.010, Building Valuation Table, with regional modifiers.

G. Reinspection Fees. A ~~\$85.00~~ \$175.00 reinspection fee shall be assessed when an inspector is requested to make an inspection or witness a test on a fire alarm or sprinkler system, and upon arrival finds the work is not ready for inspection, or the test fails.

The chief of the fire department or the chief of the fire department's designee may, in writing, suspend or revoke any permit issued pursuant to this section whenever the chief finds that the permit was issued on the basis of error, deception or fraud on the part of the applicant or upon discovery of a violation of any of the applicable codes or ordinances of the city including the provisions of this article, or work conducted outside of 180 days from the permitted date without an approved permit extension.

Section 14. Amendment of OMC 16.44.070. Olympia Municipal Code Section 16.44.070 is hereby amended to read as follows:

16.44.070 Standards

- A. All fire alarm systems shall be installed in accordance with the ordinances of the ~~city~~ City, and those portions of the National Fire Protection Standards which have been adopted by city ordinances.
- B. All new fire alarm systems shall be addressable systems. Systems shall communicate by point to the alarm monitoring agency, and cannot be monitored by DACT lines as defined in OMC 16.44.100(O).
- C. All fire alarm system wiring and components shall be electrically supervised.
- D. Fire alarm systems shall have a secondary power supply which shall automatically supply the energy to the system within 30 seconds of primary power supply failure. Under maximum normal load, the secondary supply shall have sufficient capacity to operate the fire alarm system for 24 hours, and then at the end of that period, operate all alarm indicating appliances and direct aid to the location of an emergency for 5 minutes.
- E. All rate-of-rise heat detectors shall have replacement links or be self-restoring for testing purposes.
- F. ~~All trouble and supervisory indication for~~ Post Indicating Valves, Wall Indicating Valves, and Outside Stem and Yoke Valves shall be on a zone isolated from waterflow indication, ~~and supervised for trouble only~~ wired for supervisory and trouble alarms only.
- G. The supervised relay boards that control elevator recall, HVAC, air pressurization and all other auxiliary functions shall stay "locked in," even though the audible signaling circuits have been silenced, until the panel has been reset and returned to normal.
- H. Fire alarm systems required under this article, including existing required fire alarm systems, shall have a maintenance agreement in effect with a fire alarm company and/or qualified individual (Ordinance 4220). Such agreements must provide for periodic inspection and testing as prescribed by adopted local and national standards set forth in Appendix "A" of Ordinance 4415 (see Section 16.44.070A herein). Repair service shall be available within 24 hours of notification of trouble.
- I. Zoning shall be required on all fire alarm systems when a building or complex consists of three or more separate buildings, floors, or fire divisions. When remote annunciation is required, it shall be installed so as to be clearly visible and identifiable to personnel responding to an alarm. An approved graphic annunciator panel of the premises to be protected, identifying zones, shall be provided at each required annunciator.
- J. Devices shall include both audible and visual, or a combination as specified by the Fire Chief, or the Fire Chief's designee. Audible devices shall be placed in buildings and be so located that with all intervening doors closed, the alarm device shall be heard at a minimum of 60 dba, or not less than 15 decibels above the ambient noise level, whichever is greater. Mechanical areas require 85 dba, or not less than 15 decibels above the ambient noise level, whichever is greater. Visual devices shall be provided in all common use areas including restrooms, conference rooms, work rooms, etc.
- K. When internal fire separations are required by the Building or Fire Code, all protected openings shall be provided with magnetic hold open devices tied into the building fire alarm system and wired as fail

safe. "Fail Secure" wiring is prohibited except when approved by the Fire Chief or the Fire Chief's designee.

- L. All devices installed on the exterior of a building shall be listed for exterior use, and shall be accompanied by appropriate weatherproof back boxes.
- M. One or more weatherproof horn strobe device(s) shall be installed on the exterior of the building, in a location to be designated by the Olympia Fire Department.
- N. Fire alarm control panels shall be located in a controlled heated environment. Ambient temperature shall be maintained at a range between 40 and 100 degrees F or as recommended by the manufacturer. Fire alarm control panels shall not be installed in an exterior location.
- O. Waterflow detection devices used in conjunction with a fire alarm panel shall be isolated to the last zone or zones. The installation shall conform to UL Standard #864, which states that the silence switch in the alarm panel shall be bypassed on zones having waterflow detectors. The way the alarm may be silenced is by the waterflow switch(es) returning to normal position by way of water flow cessation.
- P. Fire alarm control panels used in residential applications shall have zone verification capabilities for smoke detectors installed in dwelling units or guest rooms and connected to the control panel.
- Q. If a voice evacuation system is required, the control panel shall include amplifiers, relays, connections and battery standby power to provide a complete system.
- R. Detectors placed in false ceiling cavities shall be either analog with addressable modules or addressable, and shall have remote indicating lights in the ceiling below.
- S. Automatic detection connected to the fire alarm system in the guest rooms (sleeping rooms) of hotel/motel occupancies shall annunciate at a panel located at a consistently attended location. Such guest room smoke detectors shall be zone verification detectors. Corridor, stairway, and common area detectors are to be on separate zones from the guest room detectors.
- T. Where installations have elevators, detailed fire service operational plans shall be provided to include primary and alternate floor modes.
- U. Guest rooms in hotel/motel occupancies shall have a horn/strobe in each guest room.
- V. Combination alarms that combine burglar or hold-up alarms with fire alarms are not allowed.

Section 15. Amendment of OMC 16.70.020. Olympia Municipal Code Section 16.70.020 is hereby amended to read as follows:

16.70.020 Definitions

- A. "Appeal" means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

B. "Area of Special Flood Hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, A, AO, or AE.

C. "Base Flood" means the flood having a 1% chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designated on Flood Insurance Rate Maps by the letter A.

D. "*Basement" means any area of the building having its floor sub-grade (below ground level) on all sides and includes crawlspaces more than two vertical feet.

E. "Critical Facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include (but are not limited to) schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

F. "**Cumulative Substantial Damage" means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

G. "*Development" means any human- made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

H. "**Elevation Certificate" means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.

I. "Elevated Building" means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

J. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

K. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

L. "Flood Insurance Study (FIS)" means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.

M. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

N. "***Increased Cost of Compliance" A flood insurance claim payment up to \$30,000 directly to a property owner for the cost to comply with floodplain management regulations after a direct physical loss caused by a flood. Eligibility for an ICC claim can be through a single instance of "substantial damage" or as a result of a "cumulative substantial damage." (more information can be found in FEMA ICC Manual 301)

O. "*Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at OMC 16.70.050.B.1.b (i.e. provided there are adequate flood ventilation openings).

P. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Q. "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

R. "Recreational Vehicle" means a vehicle,

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

S. "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

T. "Structure" means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a cyclone fence or wall that may or may not require a building permit.

U. "*Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

V. "*Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either or which equals or exceed 50 percent of the total square footage of the original structure:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term can exclude:

1. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places or as otherwise determined and regulated through the NFIP requirements.

W. "Variance" means a grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance.

X. "Water Dependent" means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

Section 16. Amendment of OMC 16.70.040. Olympia Municipal Code Section 16.70.040 is hereby amended to read as follows:

16.70.040 Administration

A. Establishment of Development Permit

1. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in OMC 16.70.030.B. The permit shall be for all structures including manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."

2. Application for Development Permit. Application for a development permit shall be made on forms furnished by the City of Olympia and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FEMA Form 81-31) with Section B completed by the local official;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet floodproofing criteria in OMC 16.70.050.B.2; and
- d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. Designation of the Local Administrator. A Building Official is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions. The Building Official may delegate this authority and these duties to one or more representatives.

C. Duties and Responsibilities of the Local Administrator. Duties of the Building Official ~~shall include, but not be limited to~~ and the Building Official designee(s) include:

1. Permit Review

- a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
- c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of OMC 16.70.050.E.1 are met.

2. Use of Other Base Flood Data (In A Zones)

When base flood elevation data has not been provided (in A Zones) in accordance with OMC 16.70.030.B, Basis for Establishing the Areas of Special Flood Hazard, the Building Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer OMC 16.70.050.B, Specific Standards, and OMC 16.70.050.E Floodways.

3. Information to be Obtained and Maintained

- a. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in OMC 16.70.040.C.2, obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement. Recorded on a current elevation certificate (FEMA Form 81-31) with Section B completed by the local official.
- b. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in OMC 16.70.040.C.2:
 - i. Obtain and record the elevation (in relation to mean sea level) to which the structure was floodproofed; and
 - ii. Maintain the floodproofing certifications required in OMC 16.70.040.C.3.b.
- c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alteration of Watercourses

- a. Notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program ([44 CFR 59 -76](#)).

6. Conditions for Variances

- a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
- b. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

- c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Variances shall only be issued upon:
 - i. A showing of good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- e. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.
- f. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except OMC 16.70.040.C.6.a, and otherwise complies with OMC 16.70.050.A.1, OMC 16.70.050.A.3 and OMC 16.70.050.A.4 of the General Standards.
- g. Any applicant to whom a variance is granted shall be given written notice that the permitted structure will be built with its lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk.

Section 17. Amendment of OMC 16.70.050. Olympia Municipal Code Section 16.70.050 is hereby amended to read as follows:

16.70.050 Provisions for Flood Hazard Reduction

- A. General Standards. In all areas of special flood hazards, the following standards are required:
 - 1. Anchoring
 - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - b. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. For more detailed information, refer to FEMA publication FEMA P-85, "Protecting Manufactured Homes from Floods and Other Hazards."

2. Construction Materials and Methods

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Locating such equipment below the base flood elevation may cause annual flood insurance premiums to be increased.

3. Utilities

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- b. Water wells shall be located on high ground that is not in the floodway^z.
- c. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- d. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4. Subdivision Proposals

- a. All subdivision proposals shall be consistent with the need to minimize flood damage.
- b. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

5. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (OMC 16.70.040.C.2), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data,

high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in OMC 16.70.030.B, Basis for Establishing the Areas of Special Flood Hazard, or OMC 16.70.040.C.2, Use of Other Base Flood Data. The following provisions are required:

1. Residential Construction

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more* above the base flood elevation (BFE).

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than one foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

c. Additional requirements for below-grade crawlspace construction:

The interior grade of a crawlspace below the base flood elevation (BFE) must not be more than two-feet below the lowest adjacent exterior grade (LAG).

The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four-feet at any point.

The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

This limitation will also prevent these crawlspaces from being converted into habitable spaces.

There must be adequate drainage system that removes floodwaters from the interior area of the crawlspace.

The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained

soils and drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

The velocity of floodwaters at the site should not exceed five-feet per second for any crawlspace. For velocities in excess of five-feet per second, other foundations should be used.

Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

Below grade crawlspace construction less than two vertical feet in accordance with the requirements listed above will not be considered basements.

2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more* above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in OMC 16.70.040.C.3.b; and
 - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in OMC 16.70.050.B.1.b.

*Applicants who are floodproofing nonresidential buildings should be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below). Floodproofing the building an additional foot will reduce insurance premiums significantly.

3. Manufactured Homes. All manufactured homes in the floodplain to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above* the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
4. Recreational Vehicles. Recreational vehicles placed on sites are required to either:

- a. Be on the site for fewer than 180 consecutive days, or
- b. Be fully licensed and ready for highway use, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
- c. Meet the requirements of OMC 16.70.050.B.3 above and the elevation and anchoring requirements for manufactured homes.

C. AE Zones with Base Flood Elevations but No Floodways. In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

D. Coastal High Hazard Area and Coastal A Zone. Coastal high hazard areas (V or VE Zones) and coastal A Zones are located within the areas of special flood hazard established in section 3.2. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply to building permits and related permits in Title 16:

1. Location of Structures

- a. All buildings or structures shall be located landward of the reach of the mean high tide.
- b. The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or subdivision.

2. Construction Methods

- a. Elevation. All new construction and substantial improvements shall be elevated on piling or columns so that:

- i. The bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation plus one (1) foot or as required by ASCE/SEI 24-14, Table 4-1, whichever is more restrictive,

and,

- ii. With all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in OMC 16.70.050.D.2.d.

b. Structural Support

i. All new construction and substantial improvements shall be securely anchored on piling or columns.

ii. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

iii. Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, V, and Coastal A on the community's FIRM.

c. Certification. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in OMC 16.70.040.C.3.b.

d. Space Below the Lowest Floor

i. Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this ordinance shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.

ii. Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation provided that they are intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.

(i) breakaway wall collapse shall result from a water load less than that which would occur during the base flood and,

(ii) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

iii. If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.

iv. Prior to construction, plans for any breakaway wall must be submitted to the Construction Code Official or Building Sub-Code Official for approval.

E. Floodways. Located within areas of special flood hazard established in OMC 16.70.030.B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Construction or reconstruction of residential structures is prohibited within designated floodways*, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either, (A) before the repair, or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.

3. If OMC 16.70.050.E.1 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of OMC 16.70.050, Provisions for Flood Hazard Reduction.

F. Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

Section 18. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 19. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances remain unaffected.

Section 20. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 21. Effective Date. This Ordinance takes effect at 12:01 a.m. February 1, 2021, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

2018 IRC Update

Based on the 2018 International Residential Code,® (IRC®)

ICC LEARNING CENTER

The *International Residential Code*® (IRC®) establishes minimum regulations for residential construction. This handout will identify important changes in the IRC from 2015 to 2018 edition. Participants will be presented with those changes that will most impact their use of the code when they adopt these I-Codes. The learner will receive an overview of the most important code changes.

Goal

Participants will be able to use this document to identify changes between the 2015 and 2018 IRC allowing them to apply these code requirements to design, plan submittals and/or inspection.

The lecture and activity format allows participants to discuss the changes, reasons for the changes, and answer knowledge review questions. Information presented will allow participants to apply these new code requirements to design, plan review, and/or inspection.

Objectives

Upon completion, participants will be better able to:

- Identify the most significant differences between the 2015 and the 2018 IRC.
- Explain the differences between the current and previous edition.
- Identify changes in organization and code requirements.
- Identify the applicability of design, plan review and inspection requirements.

Content

Chapters of the IRC included in this handout:

- Chapter 1, Scope and Administration
- Chapter 3, Building Planning
- Chapter 4, Foundations
- Chapter 5, Floors
- Chapter 6, Wall Construction
- Chapter 7, Wall Covering
- Chapter 8, Roof-ceiling Construction
- Chapter 9, Roof Assemblies
- Chapter 10, Chimneys and Fireplaces
- Chapter N11, Energy Efficiency
- Chapter M13, General Mechanical System Requirements
- Chapter M16, Duct Systems
- Chapter M21, Hydronic Piping
- Chapter G24, Fuel Gas
- Chapter P 25, Plumbing Administration
- Chapter P27, Plumbing Fixtures
- Chapter P28, Water Heaters
- Chapter P29, Water Supply and Distribution
- Chapter P30, Sanitary Drainage
- Chapter P31, Vents
- Chapter E37, Branch Circuit and Feeder Requirements
- Chapter E39, Power and Lighting Distribution
- Chapter E41, Appliance Installation
- Appendix Q, Tiny Homes

Chapter 1: Scope and Administration			
Code Section		Section Title	Description of Change
2018	2015		
Modification R101.2	R101.2	Scope	All instances where the International Building Code (IBC) permits construction under the IRC are now listed in the exception to the scope of the IRC.
Clarification R105.1, R110.1, R202	R105.1, R110.1, R202	Change of Occupancy	A definition for “Change of Occupancy” has been added and the requirement for a certificate of occupancy when there is a change of occupancy or use has been clarified.

Chapter 3: Building Planning			
Code Section		Section Title	Description of Change
2018	2015		
Modification Table R301.2(1)	Table R301.2(1)	Climatic and Geographic Design Criteria	The requirement for a Manual J assessment or engineered equivalent has been in the International Residential Code for several editions. To assist the designer, jurisdictions will now include variables for Manual J assessments with other climatic and geographic design criteria available from the building department.
Modification R301.2.2.1	R301.2.2.1	Seismic Design Category	New seismic design category (SDC) maps are included in the 2018 IRC. One map contains the most conservative ‘good quality’ soil type, assuming Site Class C or D, and may increase the local SDC. The second map is allowed if the site is identified as being Site Class A, B or D by geotechnical report or known local soil conditions; this map may lower the design spectral response acceleration, S_{DS} , potentially lowering the seismic design category.
Modification R302.1	R302.1	Exterior Walls	References to the International Building Code (IBC) offer additional options and provide flexibility in determining the fire resistance rating of exterior wall assemblies. Table footnotes have been revised to clarify the correlation between gable end vents and the fire resistance requirements for projections.
Modification R302.2	R302.2	Townhouse Separation	Two paths for achieving the fire-resistant separation between townhouse dwelling units – two 1-hour walls or a common wall – are spelled out in the townhouse provisions.
Modification R302.13	R302.13	Fire Protection of Floors above Crawl Spaces	Fire-resistant membrane protection is now required for the applicable floor framing materials above crawl spaces containing fuel-fired or electric-powered heating appliances.

Chapter 3: Building Planning, Continued			
Code Section		Section Title	Description of Change
2018	2015		
Modification R308.4.2	R308.4.2	Glazing Adjacent to Doors	Glazing within 24 inches of the hinge side of an in-swinging door now requires safety glazing where the glazing is at an angle less than 180 degrees from the plane of the door.
Modification R308.4.4	R308.4.4	Glazing in Guards and Railings	Unless laminated glass is used, structural glass baluster panels in guards now require an attached top rail or handrail.
Clarification R308.4.7	R308.4.7	Glazing Adjacent to the Bottom Stair Landing	Figure R308.4.7 has been replaced with a new figure and the caption modified to more accurately reflect when safety glazing is required near the bottom landing.
Modification R310.1	R310.1	Emergency Escape and Rescue Openings	Emergency escape and rescue openings are no longer required for bedrooms in basements when the dwelling unit is protected with an automatic fire sprinkler system and other conditions are met.
Modification R310.3	R310.3	Area Wells for Emergency Escape and Rescue Doors	For emergency escape and rescue doors in basements, a change in terminology replaces "bulkhead enclosures" with "area wells" and provisions for ladders and steps for area wells are added.
Modification R311.7.1, R311.7.8	R311.7.1, R311.7.8	Handrail Projection	A new exception to the handrail projection limitation provides for adequate clearance behind the handrail when it passes the projection of a floor, landing or tread return.
Modification R311.7.3	R311.7.3	Maximum Stair Rise between Landings	The maximum rise of a flight of stairs has increased by 4 inches, from 147 to 151 inches.
Modification R311.7.11, R311.7.12	R311.7.11, R311.7.12	Alternating Tread Devices and Ships Ladders	Alternating tread devices and ships ladders are now permitted as a means of egress for lofts with an area that does not exceed 200 square feet.
Clarification R312.1	R312.1	Guards	The guard requirements only apply to the specific portion of a walking surface that exceeds 30 inches above grade.
Modification R314	R314	Smoke Alarms	The exemption for interconnection of alarms during alterations based on feasibility has been removed from the code.
Modification R315	R315	Carbon Monoxide Alarms	Interconnection is now required where multiple carbon monoxide alarms are required in a dwelling unit.

Chapter 3: Building Planning, Continued			
Code Section		Section Title	Description of Change
2018	2015		
Modification R322.3	R322.3	Coastal High-Hazard Flood Zones	In coastal high-hazard areas (V Zones) and Coastal A Zones, the IRC now provides specific guidance for the design and construction of concrete slabs, stairs, guards, decks and porches to reduce damage to the dwelling in a flood event.
Addition R324.6		Roof Access for Photovoltaic Solar Energy Systems	Requirements for roof access and pathways for firefighters have been introduced into the IRC provisions for rooftop mounted photovoltaic solar energy systems.
Addition R324.6.2.2		Solar Panels near Emergency Escape and Rescue Openings	Rooftop mounted photovoltaic solar energy panels and modules are not permitted to be installed below emergency escape and rescue openings.
Modification R325.3		Mezzanine Area Limitation	The area limitation for mezzanines has been increased from one-third to one-half of the area of the room containing the mezzanine under certain conditions.
Addition R325.6, R202		Habitable Attics	The definition of habitable attic has been revised and the technical requirements have been placed with mezzanines.

Chapter 4: Foundations			
Code Section		Section Title	Description of Change
2018	2015		
Modification Table R403.3(1)	Table R403.3(1)	Insulation requirements for frost protected footings	Insulation thickness requirements for Type II and IX extruded polystyrene (EPS) have changed. The minimum R-value for specific types of EPS has been clarified while requirements for horizontal insulation were added.
Modification Table R403.4	Table R403.4	Crushed stone footings	Table R403.4 is updated to include both the minimum depth and width of a crushed stone footing for a precast concrete wall.
Modification R408.3	R408.3	Unvented crawl space	Ventilation of the under-floor space is not required when an adequately-sized dehumidifier is provided.

Chapter 5: Floors			
Code Section		Section Title	Description of Change
2018	2015		
Modification R507	R507	Decks	Section R507 is reorganized for ease of use and additional provisions are added to simplify prescriptive construction of a deck.
Modification R507.2	R507.2, R507.3	Deck materials	Section R507.2 adds requirements for fasteners and fastener connections, flashing and alternative materials.
Addition R507.3		Deck footings	A new section on footing minimum size is added to help describe minimum prescriptive (non-engineered) requirements for an exterior deck footing based on snow load, soil quality, and footing shape and size.
Clarification R507.6	R507.5	Deck joists	Maximum joist spacing and total length have been clarified. In Table R507.6, maximum span length is listed followed by maximum cantilever length.
Clarification R507.7- R507.9	R507.2, R507.4	Decking, Vertical and Lateral Support	Decking material options and fastener systems are clarified. Vertical and horizontal support of an exterior deck is updated while support and attachment of ledgers is added to the decking section.

Chapter 6: Wall Construction			
Code Section		Section Title	Description of Change
2018	2015		
Addition Table R602.3(6)		Alternate Stud Height	To help clarify when studs greater than 10 feet long may be used, an exception is added to Section R602.3.1 as well as a reference to new Table R602.3(6) which applies only to 11- and 12-foot tall walls in one- and two-story buildings.
Modification Tables R602.7(1), R602.7(2)	Tables R602.7(1), R602.7(2)	Girder and Header Spans	Girder and header spans are updated assuming No. 2 Southern Pine rather than No. 1 Southern Pine as used in the 2015 IRC. A footnote is added to clarify that headers and girders are assumed to be braced; for headers with pony walls above, a further reduction in span is taken for 2x8 and larger headers.
Modification Table R602.7.5	Table R602.7.5	Support for headers	The 2015 IRC full height stud table is significantly altered. The table increases the number of king studs in higher wind regions and requires only one or two king studs at each end of a header in regions with 115 mph wind speeds.
Modification Table R602.10.3 (4)	Table R602.10.3 (4)	Seismic Adjustment Factors	Attempts to clarify roof and ceiling dead loads in the top story of a multi-story dwelling and use of the BV-WSP bracing method have been added. Table R602.10.3(4) now allows use of Methods WSP and CS-WSP with brick veneer in the second story of a dwelling.

Chapter 6: Wall Construction, Continued			
Code Section		Section Title	Description of Change
2018	2015		
Modification R602.10.4.1	R602.10.4.1	Mixing bracing methods	Mixing of continuous sheathing methods with an intermittent alternate bracing method is clarified. Braced wall line(s) containing an alternate method must have sufficient bracing length for an intermittent method, not just for the continuous sheathing method when the alternate method is Method PFH, PFG or ABW.
Modification R602.10.6.5	R602.10.6.5	Method BV-WSP	An attempt to clarify use of the BV-WSP method is made. New limits are added to Section R602.10.6.5.
Modification Tables R603.3.1, R603.3.1.1 (2)	Tables R603.3.1, R603.3.1.1 (2)	Cold-Formed Steel Wall Construction	Cold-formed steel connection tables are updated for wind speeds less than 140 miles per hour. Values in the IRC tables now match AISI S230, Standard for Cold-Formed Steel Framing - Prescriptive Method for One- and Two-Family Dwellings.

Chapter 7: Wall Covering			
Code Section		Section Title	Description of Change
2018	2015		
Modification R703.2	R703.2	Water-resistive barrier	Water-resistive barrier materials other than No. 15 asphalt felt must be installed following the manufacturer's installation instructions. The exemption for detached accessory buildings is deleted.
Modification R703.3.1	R703.3.1, R703.11.1.4	Soffit installation	Requirements for wood structural panel soffits are added to Section R703.3.1 and vinyl soffit requirements are clarified.
Modification R703.8.4	R703.8.4	Veneer anchorage through insulation	Masonry veneer is explicitly allowed to attach to through insulation into the underlying wood structural panels. Attachment must follow Table R703.8.4(2).
Modification R703.11.2	R703.11.2	Vinyl siding installation over foam plastic sheathing	Testing has been done on vinyl siding over insulation in an attempt to determine fastener requirements for vinyl siding attachment in high wind regions. New Table R703.11.2 gives design wind pressures for vinyl siding resisting all wind loads without reliance on wood structural panel sheathing.

Chapter 8: Roof-Ceiling Construction			
Code Section		Section Title	Description of Change
2018	2015		
Modification R802	R802	Roof Framing	Section R802, Design and construction of roofs, has been clarified by dividing the content into three separate sections on roof ridges, rafters and ceiling joists.
Modification R802.1.5.4	R802.1.5.4	Labeling	Each stick of fire-retardant-treated lumber and individual wood structural panel will be labeled with eight specific items of information
Modification R806.2	R806.2	Minimum vent area	The minimum vent area exception is clarified, stating that net free ventilation may be less than 1/150 only if two required conditions are met. Lower vents must be located in the bottom third of the attic space.

Chapter 9: Roof Assemblies			
Code Section		Section Title	Description of Change
2018	2015		
Addition R905.17		Building Integrated Photovoltaic Panels	New Section R905.17 addresses installation and attachment of building-integrated photovoltaic (BIPV) roof panels.

Chapter 10: Chimneys and Fireplaces			
Code Section		Section Title	Description of Change
2018	2015		
Addition R1005.8		Chimney insulation shield	Factory-built chimneys, which have been required to maintain a minimum clearance to insulation, are now required to have an insulation shield to provide the clearance to the insulation.

Chapter 11: Energy Efficiency			
Code Section		Section Title	Description of Change
2018	2015		
Clarification N1101.6, Tables N1101.10.3 (1) and N1101.10.3 (2)	N1101.6, Tables N1101.10.3 (1) and N1101.10.3 (2)	Fenestration Definitions and U-Factors	The definitions for skylights and vertical fenestration have been moved under the definition for fenestration, and a definition for opaque door has been added.

Chapter 11: Energy Efficiency, Continued			
Code Section		Section Title	Description of Change
2018	2015		
Modification N1102.1	N1102.1	Building Thermal Envelope for Log Homes	Log homes are now exempt from the prescriptive building thermal envelope requirements when designed in accordance with ICC-400, <i>Standard on the Design and Construction of Log Structures</i> .
Modification N1102.1.2 and N1102.1.4	N1102.1.2 and N1102.1.4	Insulation and Fenestration Requirements	The prescriptive U-factors for fenestration have been lowered to improve the energy efficiency of dwellings and townhouses.
Modification N1102.2.2	N1102.2.2	Reduction of Ceiling Insulation	When applying the exception for insulation in ceilings without attics, the insulation must extend to the outside of the top plate.
Clarification N1102.2.5	N1102.2.5	Mass Walls	The mass wall provisions have been itemized in a numbered list to bring accuracy and clarity to the technical requirements.
Modification N1102.2.6	N1102.2.6	Cold-Formed Steel Framing R-Values	Conflicting entries have been removed from the table establishing cold-formed steel R-values equivalent to those for wood framing.
Modification N1102.4	N1102.4	Testing for Air Leakage	A new standard for air-leakage testing, RESNET/ICC 380, is now referenced in the IRC to provide flexibility for the testing industry.
Addition N1103.3.6 and N1103.3.7		Ducts Buried within Ceiling Insulation	New provisions address the methods, minimum coverage requirements and thermal benefits for ducts buried within ceiling insulation, and when those ducts are considered inside the building thermal envelope.
Modification N1104.1	N1104.1	Lighting	The required percentage of permanent lighting fixtures having high-efficacy lamps has increased from 75 to 90 percent.
Modification N1106.3, N1106.4	N1106.3, N1106.4	Maximum Energy Rating Index	The maximum rating index values based on climate zone have increased slightly to make the ERI provisions less restrictive and improve the flexibility of the energy provisions.

Chapter M13: General Mechanical System Requirements			
Code Section		Section Title	Description of Change
2018	2015		
Deletion M1305.1.1	M1305.1.1	Access to Furnaces within Compartments	The appliance access requirements for furnaces in compartments have been removed from the code in favor of other code provisions and the manufacturer's instructions.
Modification M1305.1.3.2	M1305.1.4.2	Appliances Installed in Pits	The requirements for appliance installation in pits has been expanded to provide more detail and to be similar to language found in other ICC codes. The minimum bottom clearance has been reduced from 6 inches to 3 inches.

Chapter 15: Exhaust Systems			
Code Section		Section Title	Description of Change
2018	2015		
Modification M1502.3.1	M1502.3.1	Dryer Exhaust Duct Termination	A minimum area of 12.5 square inches has been established for the terminal outlet of dryer duct exhaust.
Modification M1502.4.2	M1502.4.2	Concealed Dryer Exhaust Ducts	Wall and ceiling cavities enclosing dryer exhaust duct must provide sufficient space that the 4-inch duct is not squeezed out of its round shape.
Modification M1503.6	M1503.6	Makeup Air for Kitchen Exhaust Systems	Makeup air for domestic cooking exhaust systems is no longer required if all fuel-burning appliances in the dwelling unit have a direct vent or mechanical draft vent system.

Chapter M16: Duct Systems			
Code Section		Section Title	Description of Change
2018	2015		
Modification M1601.1.2	M1601.1.2	Underground Duct Systems	Underground ducts, including both direct-burial ducts and those encased in concrete, require sealing and testing.

Chapter M21: Hydronic Piping			
Code Section		Section Title	Description of Change
2018	2015		
Modification M2101.10	M2101.10	Pressure Tests for Hydronic Piping	Compressed air testing of PEX hydronic piping is now allowed when testing is in accordance with the manufacturer's instructions.
Modification M2103.2	M2103.2	Thermal Barrier for Radiant Floor Heating Systems	For hydronic floor heating systems, the minimum insulation R-values have been removed from Section M2103.2 and a reference to the energy provisions of Chapter 11 has been added.

Chapter G24: Fuel Gas			
Code Section		Section Title	Description of Change
2018	2015		
Modification G2406.2	G2406.2	Prohibited Locations for Appliances	A gas-fired clothes dryer is now allowed to be installed in a bathroom and toilet room where a permanent opening communicates with other permitted spaces.
Modification G2411.2, G2411.3	G2411.2, G2411.3	Electrical Bonding of CSST	The existing provisions for electrical bonding apply to CSST without an arc-resistant jacket or coating and a new section addresses electrical continuity and bonding of arc-resistant CSST.
Modification G2414.4.2, G2414.10.1	G2414.4.2, G2414.10.1	Schedule 10 Steel Gas Piping	The code now allows Schedule 10 steel pipe to be used for fuel gas piping.
Modification G2415.11	G2415.11	Protection against Corrosion	Reorganization of this section includes new provisions to address corrosion protection of underground steel gas piping and protection for steel risers other than anodeless risers.
Clarification G2420.5.1	G2420.5.1	Shutoff Valve Location	Shutoff valves located behind movable appliances are considered as meeting the requirement for access.
Addition G2420.6		Support for Shutoff Valves in Tubing Systems	Shutoff valves in gas tubing systems require rigid support separate from the tubing to prevent damage at the valve connection.
Deletion G2442.2	G2442.2	Forced Air Furnace Duct Size	The prescriptive duct size requirements for forced air furnaces have been deleted in favor of other sizing methods specific to the appliance.
Modification G2447.2	G2447.2	Commercial Cooking Appliances	Commercial cooking appliances are now permitted in dwelling units when installed in accordance with an engineered design and the manufacturer's instructions.

Chapter P25: Plumbing Administration			
Code Section		Section Title	Description of Change
2018	2015		
Modification P2503.7	P2503.7	Air Testing of PEX Piping	Compressed air testing of PEX water supply piping is now allowed when testing is in accordance with the manufacturer's instructions.

Chapter P26: General Plumbing Requirements			
Code Section		Section Title	Description of Change
2018	2015		
Modification P2602.1	P2602.1	Connections to Public Sewer or Private Sewage Disposal System	The International Private Sewage Disposal Code (IPSDC) is referenced for installation of private sewage disposal systems where there are no state or local requirements for such systems.

Chapter P27: Plumbing Fixtures			
Code Section		Section Title	Description of Change
2018	2015		
Modification P2704	P2704	Slip Joint Connections	Slip joint connections are permitted anywhere between the fixture outlet and the drainage piping, and are no longer limited to the trap inlet, outlet and trap seal locations.
Modification P2713.1	P2713.1	Bathtub Overflow	Bathtub overflow outlets are no longer required.

Chapter P28: Water Heaters			
Code Section		Section Title	Description of Change
2018	2015		
Modification P2801.6	P2801.6	Plastic Pan for Gas-Fired Water Heaters	Plastic safety pans are now allowed under gas water heaters provided the material falls within the prescribed flame spread and smoke developed indices.

Chapter P29: Water Supply and Distribution			
Code Section		Section Title	Description of Change
2018	2015		
Modification P2902.5.4, P2904.	P2902.5.4, P2904.	Backflow Protection for Fire Sprinkler Systems	Sections P2902.5.4 and P2904.1 are revised and coordinated to clarify that stand-alone and multipurpose fire sprinkler systems complying with Section P2904 or NFPA 13D do not require backflow protection under most circumstances.
Modification P2903.5	P2903.5	Water Hammer Arrestors	A water hammer arrestor is now required where quick-closing valves are used in the water distribution system.
Addition P2906.6.1	P2906.6.1	Saddle Tap Fittings on Water Distribution Piping	Saddle tap fittings are no longer permitted on water distribution system piping.
Modification P2906.18.2	P2906.18.2	Joints between PVC and CPVC Piping	A single solvent-cement transition joint is now an acceptable method for connecting a CPVC water distribution system to a PVC water service pipe.

Chapter P30: Sanitary Drainage			
Code Section		Section Title	Description of Change
2018	2015		
Modification P3003.2	P3003.2	Prohibited Joints for Sanitary Drainage	A solvent cement joint is now permitted for joining ABS and PVC piping at the connection of the building drain to the building sewer.
Modification P3005.1.6	P3005.1.6	Reduction in Pipe Size	Water closet flanges, offset bend fittings and offset flanges are now specifically listed as exceptions to the provision that drainage piping must not be reduced in size in the direction of flow.

Chapter P31: Vents			
Code Section		Section Title	Description of Change
2018	2015		
Modification P3103.1	P3103.1	Vent Pipe Terminations	The provisions for vent terminals have been reorganized and a new option has been added to allow a 2-inch vent extension through a sloped roof when the vent is covered.
Modification P3111	P3111	Combination Waste and Vent System	Food waste disposers and drinking fountains are now permitted to connect to a combination waste and vent system.
Modification P3114.8	P3114.8	Prohibited Installations for Air Admittance Valves	An air admittance valve cannot be used to resolve the problem of an open vent terminal that is too close to a building air intake.

Chapter E37: Branch Circuit and Feeder Requirements			
Code Section		Section Title	Description of Change
2018	2015		
Addition E3703.5		Garage Branch Circuits	A separate 20-ampere branch circuit is now required to serve receptacle outlets of attached garages and detached garages with electric power.

Chapter E39: Power and Light Distribution			
Code Section		Section Title	Description of Change
2018	2015		
Modification E3901.2	E3901.2	Wall Space for Receptacle Distribution	Cabinets with countertops are now considered wall space in determining required locations for general purpose receptacle outlets.
Modification E3901.3	E3901.3	Appliances on 15 Amp Circuits	An individual 15-ampere branch circuit is permitted to serve any specific kitchen appliance.
Addition E3902.4		GFCI Protection for Crawl Space Lighting Outlets	Ground-fault circuit-interrupter (GFCI) protection is now required for lighting outlets of crawl spaces.
Addition E3905.2.1		Nonmetallic-Sheathed Cable and Metal Boxes	Where entering a metal box, nonmetallic-sheathed cable must extend into the box at least 1/4 inch and extend past the cable clamp.

Chapter E41: Appliance Installation			
Code Section		Section Title	Description of Change
2018	2015		
Modification E4101.3	E4101.3	Cord- and-Plug-Connected Appliances	The maximum cord lengths for range hoods and built-in dishwashers have increased and the code clarifies that the receptacle outlet for the dishwasher has to be in the space adjacent to the appliance.

Appendix Q: Tiny Houses			
Code Section		Section Title	Description of Change
2018	2015		
Appendix Q Addition		Tiny Houses	A new Appendix Q covers provisions for tiny houses, defined as dwellings with a maximum floor area of 400 square feet.

Explore the Upcoming Changes in the 2018 Washington State Energy Code

April 28, 2020

As many in the industry are aware, an amended version of the Washington State Energy Code (WSEC) was introduced in 2018. The 2018 WSEC will go into effect on November 1, 2020 and will have a significant effect on the building industry.

To help you navigate the upcoming changes, our Energy & Sustainability team developed a list of some important changes to the 2018 WSEC. This blog post will be updated as more information is made available, so be sure to check back here. The various changes our team explores in this blog post include:

- [Introduction of a New Compliance Path](#)
- [Changes to Total Building Performance](#)
- [New and Updated Definitions](#)
- [Air-leakage Testing](#)
- [Understanding the Extra Efficiency Credits](#)

This blog post refers to changes to the Commercial portion of the WSEC, which covers most buildings other than residential-unit-only buildings that are three stories and less. If you have any questions about these changes and would like to learn how they will affect your project, please reach out to us at sea@rdh.com or call **206-324-2272**.



Introduction of a New Compliance Path

The 2018 WSEC introduces a new **outcome-based energy budget compliance path** in addition to the prescriptive compliance and the total building performance paths. The outcome-based energy budget was adopted from the 2015 Seattle Energy Code and sets a maximum Energy Use Intensity (EUI) budget for each building occupancy/ use. Project teams must develop a single whole-building energy model for the proposed building to comply with this new standard. This path limits the building enclosure's total heat loss coefficient (UA) to be no more than 20% higher than the level stated in the prescriptive code. To ensure compliance is maintained, the building owner or the owner's representative must submit one year of the building's actual energy use within the first three years of occupancy, and every five years after the first submission. Penalties will be imposed if the building's actual EUI exceeds the code-required EUI budget. It is important to note that the outcome-based energy budget compliance path is not applicable unless it has been adopted by your local jurisdiction.

While the outcome-based path presents a new option for project teams to explore, teams are still able to follow the existing compliance paths. Those two paths entail the following:

- The **prescriptive compliance path** can be met by either achieving the specified R-value for each assembly or utilizing the envelope component trade-off method.
- The **total building performance path** requires developing two whole-building energy models—a baseline building and the proposed building—to demonstrate that the energy performance of the proposed design exceeds the baseline building.

Changes to the Total Building Performance Path

As noted above, the total building performance path requires developing both a baseline and a proposed whole-building energy model to show that the completed building will exceed the baseline's energy performance.

- This path now limits the building enclosure's total UA to be no more than 20% higher than the level stated in the prescriptive code.
- The energy modeling requirements are now based on ASHRAE Standard 90.1 Appendix G rather than the International Energy Conservation Code (IECC).
- The primary performance metric is now carbon emissions rather than energy consumption.
- Section C406 extra efficiency credits are no longer required for this path.

New and Updated Definitions

The 2018 WSEC includes several definition updates that relate to the code changes. The highlighted definitions listed below are important in understanding the new updates.

- **Continuous insulation:** Only metal thermal bridges are stipulated in this definition. Insulation is considered continuous only if metal thermal bridges have a cross-sectional area < 0.04% of the enclosure surface area; otherwise, the insulation does not meet this definition and metal thermal bridges must be accounted for.
- **Visible transmittance (VT):** Visible transmittance for skylights must now be measured and rated according to the National Fenestration Rating Council (NFRC) section 202, while tubular daylighting devices must adhere with NFRC section 203.
- **Mass transfer deck slab edge:** Cantilevered balconies are now excluded from the definition of a mass transfer deck slab edge. This means that cantilevered concrete balconies must meet the insulation requirement for mass walls. The diagram

below depicts a mass transfer slab edge at a typical deck condition or the transition from an above-grade structure to a below-grade structure.

Air-leakage Testing

In 2009, Washington State introduced mandatory air-leakage testing for all new buildings and has continued to incrementally increase targets. The 2018 WSEC requires project teams to aim for a more stringent target in terms of air leakage. Project teams will need to achieve an air-leakage rating of 0.25 cfm/ft² at 0.3 inches water gauge or below in order to meet the 2018 WSEC.

If the test result is greater than 0.25 cfm/ft² and less than 0.40 cfm/ft², the project team is required to conduct visual inspections, seal the leaks, and document corrective actions.

If the test result exceeds 0.40 cfm/ft², the project team will be required to make the necessary remediations and conduct the test again. Further remedial work and retesting will be required until a leakage rate of 0.40 cfm/ft² or less is achieved. **A test above 0.40 cfm/ft² will not be accepted.**

While the change should not affect the design and construction of new buildings, it does reduce the margin for error and increases the consequences of not meeting the required air-leakage ratings. Project teams will need to focus on well thought-out air barrier detailing as well as quality assurance and quality control programs during construction. The added attention to all aspects of the air barrier design and construction are necessary to avoid the potentially high consequences of not meeting the desired air-leakage rating.

Understanding the Extra Efficiency Credits

The extra efficiency credits were introduced in the 2015 WSEC for project teams pursuing the prescriptive compliance path. The 2018 WSEC now requires project teams to achieve a minimum of six credits—a four-credit increase from the 2015 code. The 2018 WSEC provides a series of options that ultimately contribute to the energy efficiency of the finished building. Each option is weighted differently depending on the building occupancy type. As shown in Efficiency Package Credits table below, some options allow project teams to earn more credits than others. For example, by achieving enhanced envelope performance per Section C406.10c on a Group R-2 building, project teams will earn all six credits needed. Teams that implement a high-performance, dedicated outdoor air system (DOAS) per Section C406.7 on the same building type will earn just four credits, requiring the team to seek more credits using another option.

Efficiency Package Credits table has been adapted by RDH from the WSEC 2018 edition.

Future Changes and How to Learn More

As the code continues to evolve including possible amendments and our knowledge of these changes expands, we will update this post for your reference. If you would like to receive a notification when this post is updated, please fill in the form below.

The first printing of the WSEC – Commercial 2018 Edition can be [viewed here](#).

Our Energy & Sustainability team has the unique ability to provide an integrated approach to enclosure and energy-efficient design, allowing for the development of optimized solutions that provide cost-effective means of achieving the design intent and energy performance goals. RDH has extensive expertise in whole-building energy modeling and completing prescriptive energy code compliance calculations for many building types, from small and large residential buildings to commercial offices, institutional buildings, and government buildings. Our team is currently undergoing the design of several buildings that are in compliance with the 2018 WSEC . We invite you to reach out to one of our specialists about our current experience and how we can support you through the code transition.

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WRITTEN BY:

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As the Communications Coordinator, Lucas is dedicated to sharing the stories of RDH's people and projects.

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City Council

Public Hearing on an Ordinance Granting the Renewal of a Franchise Agreement with Comcast for Use of City Rights-of-Way to Operate and Maintain a Cable Communication System

Agenda Date: 1/12/2021
Agenda Item Number: 5.A
File Number:21-0017

Type: public hearing **Version:** 1 **Status:** Public Hearing

Title

Public Hearing on an Ordinance Granting the Renewal of a Franchise Agreement with Comcast for Use of City Rights-of-Way to Operate and Maintain a Cable Communication System

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Conduct a public hearing on the ordinance granting the renewal of a non-exclusive franchise agreement with Comcast Cable Communications Management, LLC, for the non-exclusive use of city rights-of-way to operate and maintain a cable communication system in the City of Olympia. Following the hearing, move to approve the ordinance on first reading and forward to second reading.

Report

Issue:

Whether to hold a public hearing on the Ordinance granting the renewal of a non-exclusive franchise agreement with Comcast for the non-exclusive use of city rights-of-way to operate and maintain a cable communication system in Olympia, and whether to approve the Ordinance and forward it to second reading.

Staff Contact:

Kellie Purce Braseth, Director of Strategic Communications, Executive, 360-753-8361

Presenter(s):

Kellie Purce Braseth, Director of Strategic Communications

Ken Fellman, Attorney, Kissinger & Fellman, P.C.

Hans Hechtman, Senior Director for Government & Regulatory Affairs, Comcast

Background and Analysis:

The City of Olympia's 2009 franchise agreement with Comcast Cable Communications Management, LLC, expired in March 2019. The City notified Comcast of its intention to begin the renewal process in December 2017, and in March 2018 entered in an interlocal agreement with Thurston County and the cities of Lacey and Tumwater to jointly negotiate the renewal of the cable franchise agreement, as had been done with the 2009 agreement.

Together, the four jurisdictions retained Ken Fellman of Kissinger & Fellman, P.C., an attorney with significant experience negotiating cable franchise agreements and who the jurisdictions had retained to negotiate the 2009 franchise agreement. The length of the negotiations required extensions of the 2009 agreement, the last to expire on December 31, 2020. The attached draft agreement was negotiated through the interlocal process. The proposed franchise agreement went before the City of Tumwater on January 5 and will go before the Thurston County Commissioners on January 13. The City of Lacey will hold public hearings on the proposed franchise on January 21.

The proposed cable franchise agreement is for non-exclusive use of city rights-of-way to operate and maintain a cable communication system in Olympia. It is based on Olympia's 2009 franchise, but updated to address new technologies, to reflect changes in the legal and regulatory environment and to align with the language of other recent franchise agreements Comcast has entered into in Washington state and Colorado.

It is important to understand the legal limitations related to cable franchising. Specifically, the cable franchise can only address the provision of cable (video) service in Olympia. Federal and state law prohibits the City from collecting franchise fees on Comcast's non-cable service revenue, such as telephone services and broadband internet.

The new 10-year cable franchise proposal seeks to accomplish four things:

1. Maintain the benefits of the 2009 agreement.
2. Eliminate provisions in the 2009 agreement that were no longer relevant.
3. Update and clarify Comcast's obligations around maintaining financial records on franchise fee calculations and payments.
4. Develop franchise language to obtain High Definition (HD) channels and a level of capital cost support for PEG expenditures.

Some issues of interest in the new franchise:

Franchise Fees and the Definition of Gross Revenues: Comcast will continue to pay the City franchise fees in an amount equal to five (5) percent of gross revenues of cable services in Olympia (currently approximately \$300,000 annually). Through the negotiations, the definition of "gross revenues" was amended to ensure the five (5) percent fee generates the most revenue allowed under federal law (see Franchise Section 1.28).

Audit/Financial Review: Following a franchise fee audit by the jurisdictions' consultant, new language was added to the proposed agreement to ensure Comcast conducts more accurate and record-based evaluations of future franchise fee payments. (See, Franchise Section 3.6)

PEG (Public, Educational and Government Access) Issues: The new proposed franchise agreement will add HD channels to the City's PEG operations. PEG programming is currently only available on standard definition (SD) channels. As more residents move to HD television, SD-only programming

will not serve them well. The agreement provides for government and other PEG programming to be shown simultaneously on the HD channels and SD PEG channels. It also maintains the ability of the residents of all the jurisdiction to watch the local PEG content of other jurisdictions.

As part of previous franchise agreements, Comcast has leased studio space at 440 Yauger Way to Thurston County Media (TCM) for \$1/year. However, Comcast is not required to do so under current law. In the process of the renewal negotiations, Comcast notified the jurisdictions of their intention to no longer support the TCM studio space with the \$1/year lease as of December 1, 2021.

Neighborhood/Community Interests (if known):

Members of the community are impacted daily by the need for and use of cable service in their homes and businesses.

Options:

1. Conduct a public hearing on the ordinance granting the renewal of a non-exclusive franchise agreement with Comcast Cable Communications Management, LLC, for the use of city rights-of-way to operate and maintain a cable communication system in the City of Olympia.
Following the hearing, move to approve the Ordinance and forward to second reading.
 - a. Moves the franchise toward adoption;
 - b. The proposed franchise is consistent with Thurston County and the cities of Lacey and Tumwater; and
 - c. Continues to provide Public, Education and Government channels for use of Olympia residents.
2. Conduct a public hearing and propose changes to the franchise agreement.
 - a. Comcast may or may not agree to the proposed changes;
 - b. Olympia's franchise may not be substantively unaligned with neighbor jurisdictions and confuse community members; and
 - c. May delay the adoption of a new franchise agreement.

Financial Impact:

The City of Olympia continues to receive 5 percent franchise fees (approximately \$300,000 annually) and PEG capital contribution of approximately \$45,000 annually.

Attachments:

Ordinance and Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING THE RENEWAL OF A NON-EXCLUSIVE FRANCHISE AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC FOR THE USE OF CITY RIGHTS-OF-WAY TO OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM IN THE CITY OF OLYMPIA

WHEREAS, by Ordinance No. 4610, the City of Olympia (City) granted a franchise to Comcast of Washington IV, Inc. (formally TCI Cablevision of Washington, Inc.) to operate and maintain a cable communication system in the City; and

WHEREAS, in 2009, by Ordinance No. 6625, the Olympia City Council approved the grant of a non-exclusive Franchise Agreement to Comcast of Washington IV, Inc. (Comcast) for its construction and operation of a cable television system within the City; and

WHEREAS, the Comcast entity which holds the current franchise in the City is the successor interest to Comcast of Washington IV, Inc., known as Comcast Cable Communications Management, LLC; and

WHEREAS, in 2018, Thurston County and the cities of Olympia, Tumwater, and Lacey engaged a consultant to negotiate a comprehensive franchise agreement covering all four jurisdictions; and

WHEREAS, the term of the original Cable Franchise Agreement was for ten (10) years, expiring on May 23, 2019; and

WHEREAS, the City and Comcast have previously agreed to continue operating under the existing franchise on a month-to-month basis until a new franchise is adopted or until the current agreement is otherwise terminated; and

WHEREAS, on February 5, 2019, by Ordinance No. 7185, and on December 17, 2019, by Ordinance No. 7228, Comcast and the City agreed to extend the Franchise Agreement, as the parties were in negotiations and preparing a new franchise agreement; and

WHEREAS, Comcast is agreeable to continuing providing such services in the City, and has made application to the City for a cable franchise renewal; and

WHEREAS, the City has reviewed Comcast's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and has determined that Comcast's plans for constructing, operating and maintaining its cable system are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City Council held a public hearing on the proposed new franchise agreement on January 12, 2021, and the public has had adequate notice and opportunity to comment on Comcast's proposal to provide cable service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable service, and reliability of cable systems in its jurisdiction, the availability of local programming (including Educational and Governmental Access programming) and quality customer service; and

WHEREAS, diversity in cable service programming is an important policy goal and the Comcast cable system should offer a wide range of programming services; and

WHEREAS, the City is authorized by applicable law to grant one or more non-exclusive franchises to construct, operate and maintain cable systems within the boundaries of the City; and

WHEREAS, the Olympia City Council desires to grant to Comcast and Comcast desires to accept the terms and conditions herein set forth for the use of City owned rights-of-way, of City owned easements, and of rights-of-way

and access easements dedicated and accepted for public use by the City in installing and operating a cable system in the City in accordance with applicable law and the provisions of the Cable Franchise Agreement by and between the City of Olympia, Washington and Comcast Cable Communications Management, LLC, submitted to the Olympia City Council; and

WHEREAS, after due evaluation, the Olympia City Council finds and determines that it is in the best interest of the City and its residents to grant a cable franchise renewal to Comcast for a term of ten (10) years as provided in the Cable Franchise Agreement between the City of Olympia and Comcast attached hereto as Exhibit A;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Approval. The City Council of the City of Olympia, Washington hereby approves the Cable Franchise Agreement by and between the City of Olympia, Washington and Comcast Cable Communications Management, LLC as submitted to the Olympia City Council, in the form attached hereto as Exhibit A.

Section 2. Signature Authority. The City Manager is directed and authorized to execute on behalf of the City of Olympia the Cable Franchise Agreement with Comcast Cable Communications Management, LLC, attached hereto as Exhibit A, together with any other documents reasonable and necessary in connection with said Cable Franchise Agreement, and to make any minor modifications as may be required and are consistent with the intent of the Cable Franchise Agreement, or to correct any scrivener's errors.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 4. Safety. The City Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This Ordinance shall be effective five (5) days after publication following adoption, as required by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

EXHIBIT A

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND CITY OF OLYMPIA, WASHINGTON

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**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND
CITY OF OLYMPIA, WASHINGTON
CABLE FRANCHISE AGREEMENT**

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein when indicated with the text of the Franchise by being capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined or those defined but not capitalized within the text shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 “Cable System” means a facility, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City Council” means the Olympia City Council, or its successor, the governing body of the City of Olympia, Washington.

1.16 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.17 “Designated Access Provider” means the entity or entities designated now or in the future by Grantor to manage or co-manage Access Channels and facilities. Grantor may be a Designated Access Provider.

1.18 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 “Emergency” means a public safety emergency creating an immediate danger to property, life, health or safety of any individual in or under any right-of-way or a service interruption to a large number of Subscribers caused by an unforeseen or unanticipated failure.

1.21 “FCC” means the Federal Communications Commission.

1.22 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.23 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.24 “Franchise Area” means the area within the jurisdictional boundaries of Grantor, including any areas annexed by Grantor during the term of this Franchise.

1.25 “Franchise Fee” means that fee payable to Grantor described in subsection 3.1.

1.26 “Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee or assignee.

1.27 “Grantor” means the City of Olympia, Washington, a municipal corporation of the State of Washington.

1.28 “Gross Revenues” means and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and EffecTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law. The allocations shall be done for each bundled package separately and updated and revised within sixty (60) days of each time an element within the package has its rate card changed including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. Grantor reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.28 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.29 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.30 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.31 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.32 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements. Right-of-Way does not include any private property, or any other public property owned, in whole or in part, leased, or otherwise occupied by Grantor, including but not limited to parks, trails, and open space.

1.34 “State” means the State of Washington.

1.35 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.38 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) Grantor hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and generally applicable ordinances and regulations enacted by the City Council pursuant thereto, portions of which may be codified in the Municipal Code. To the

extent there is any conflict between this Franchise and any provision of the Grantor's Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor's right to exercise its police power under Section 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent Grantor from imposing additional conditions for use of the Rights-of-Way, as allowed by Applicable Law should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee's non-Cable Service operations.

(E) Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions and obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Grantor;

(2) Any permit, agreement, or authorization required by the Grantor for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which Grantor has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.2 Use of Rights-of-Way

(A) Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area.

(B) Grantee must follow Grantor established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to Grantor's role in protecting public health, safety and welfare, Grantor may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by Grantor, or which is installed without prior Grantor approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on January 27, 2021 (the "Effective Date"), and shall terminate on January 27, 2031 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of Grantor to use the same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems, as Grantor deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. Grantor shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of Grantor's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If Grantor grants such an

additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then Grantor agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; complementary services; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, cease to provide such services within the City, the City may provide ninety (90) days' written notice to Grantee of such fact, and the City and Grantee shall enter into good faith negotiations to determine which of the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then Grantor shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if Grantor and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that Grantor grants to another provider of Cable Services (with the understanding that Grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, Grantor shall immediately commence

proceedings to replace this Franchise with the franchise issued to the other multi-channel video programming provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise agreement with Grantor.

(F) Notwithstanding any provision to the contrary, at any time that a wireline facilities-based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City that permits a new entrant to utilize the Rights of Way granted by Grantor, then:

(1) Grantee may negotiate with Grantor to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice and Grantee shall be deemed to have timely invoked the renewal process under 47 USC 546; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

For the purposes of this section, a "wireline facilities-based entity" means an entity, including the Grantor, that owns, controls or manages a significant portion of the wireline facilities located in the Grantor's Rights-of-Way, over which the video programming services are delivered.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every

provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due or such shorter period if required by Applicable Law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within ninety (90) days after the end of each year, furnish to Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent

audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.28, as part of the Franchise Fee audit/review Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Grantor subscribers during the audit period. To the extent that Grantor does not believe that the relevant data supplied is sufficient for Grantor to complete its audit/review, Grantor may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period, with such amount to increase upon the annual anniversary of the Effective Date, by an amount equal to the most recent semi-annual Seattle-Tacoma-Bellevue CPI-U as published by the US Department of Labor, Bureau of Labor Statistics. The Grantor's right to audit/review and Grantee's obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any quarterly Franchise Fee payment is not received within forty-five (45) days from the date the payment was due to the Grantor, Grantee shall pay interest on the amount due in the amount of one percent (1%) per month (twelve percent (12%) per annum) on any unpaid balance of the Franchise Fee due, until all payments due are paid in full. Any unpaid fee or interest due under this Franchise that remains unpaid shall constitute a debt to the Grantor, collectible in accordance with the Grantor Code.

3.8 Underpayments and Overpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest as applicable for late payments under Section 3.7 of this Franchise, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor. If an overpayment is discovered, Grantee may take an offset against future Franchise Fee payments, with no interest or other cost to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to Grantor hereunder, provided that the Grantor adopts such increase at a public hearing and Grantee has received at least ninety (90) days prior written notice from Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

(A) The PEG Capital Contribution pursuant to Section 9.6, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the Grantor with advance written notice. Such notice shall document the proposed offset or service charges so that the Grantor can make an informed decision as to its course of action. Upon receipt of such notice Grantor shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) Grantee's notice pursuant to Section 3.11(A) shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Section 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for Grantor to make its election under Section 3.11(A); provided however, that any disagreements or disputes

over whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under Sections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in Section 3.11 (B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include those modifications.

(D) If the parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The Grantor acknowledges that Grantee currently provides one outlet of Basic Service and Digital Starter Service and associated equipment to certain Grantor owned and occupied or leased and occupied buildings, schools, fire stations and public libraries located in areas where Grantee provides Cable Service. For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

(1) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Section 3.11(A)-(D) above. Grantor may make a separate election for each account or line of service identified in the notice (for example, Grantee may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving complimentary services with copies of those notice(s) sent to the Grantor.

(2) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311, and that this Order is on appeal. Should there be a final Order in the appeal of the 621 Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the Grantor's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred twenty (120) days of written notice from the Grantor, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the Grantor's regulatory authority.

3.12 Tax Liability

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by Grantor. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of Grantor upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which Grantor deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law.

(B) Nothing in this Franchise shall limit nor expand Grantor 's right of eminent domain under State law.

4.2 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or, where consistent with any requirements of Federal law, geographic location within the Franchise Area. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.3 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of Grantor, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.4 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.5 Reserved Authority

Both Grantee and Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.6 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for Grantor to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

4.7 Franchise Amendment Procedure

Except as otherwise provided in Section 2.6, Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of

receipt of notice, Grantor and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.8 Performance Evaluations

(A) Special evaluation sessions may be held at any time upon request by Grantor during the term of this Franchise.

(B) All evaluation sessions shall be open to the public.

(C) Topics that may be discussed at any evaluation session may include those issues surrounding the terms, conditions and obligations of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.9 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the customer service standards described in Section 6.1 or any Grantor customer service standards, as the same may be adopted and amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of Grantor without regard to the neighborhood or income level of the Subscriber.

4.10 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to Grantor. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or

unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Franchise Area and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by Grantor to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide Grantor with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its officers, officials, boards, commissions, agents, employees and volunteers, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with Grantor while conducting its defense of Grantor. Grantee shall not be obligated to indemnify Grantor to the extent of Grantor's negligence or willful misconduct. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

(B) Indemnification for Relocation. Grantee shall indemnify Grantor for any damages, claims, documented additional costs or reasonable expenses assessed against, or payable by, Grantor arising out of, or resulting from, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with a relocation required by Grantor. Grantee shall always be provided a minimum of thirty (30) days-notice to perform such relocation, except in the case of an emergency and therefore the obligation to indemnify would not apply.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, Grantor shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Grantor's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting Grantor without Grantor's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between Grantor and the counsel selected by Grantee to represent Grantor, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by Grantor in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Grantor's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by Grantor's Attorney or his/her assistants or any employees of Grantor or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided Grantor by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations,

independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of five million dollars (\$5,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than five million dollars (\$5,000,000) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to Grantor.

(A) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A: VII."

(C) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

5.4 Letter of Credit

(A) If there is a claim by Grantor of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then Grantor may require and Grantee shall establish and provide within thirty (30) days from receiving notice from Grantor, to Grantor as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to Grantor in the amount of fifty thousand dollars (\$50,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained fifty thousand dollars (\$50,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by Grantor for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay Grantor sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by Grantor to correct Franchise violations not corrected by Grantee;

(3) Monetary damages assessed against Grantee as provided for in this Franchise.

(D) Grantor shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) business days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds Grantor erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, and any local standards adopted in accordance with applicable law. Grantee acknowledges Grantor's ability to enact customer service standards that exceed those enacted by the FCC and Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or Applicable Law. Upon request, Grantee will provide to Grantor a sample of the Subscriber contract or service agreement then in use.

6.4 Identification of Local Franchise Authority on Subscriber Bills

Within ninety (90) days after written request from Grantor, Grantee shall place Grantor's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records relevant to the provision of Cable Services in the Franchise Area and related to any terms, conditions or obligations contained in this Franchise open and accessible to Grantor. Grantor, including Grantor's Auditor or his/her authorized representative, shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to Grantor, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary or appropriate for the performance of any of Grantor's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality and Proprietary Information

Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under State or federal law. If Grantor receives a request under the Act to inspect or copy the information so identified by Grantee and Grantor determines that release of the information is required by the Act, Grantor will use its best efforts to promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than 10 business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify and hold the Grantor harmless from any claim or judgment and Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

The Grantor has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act, however the Grantor may assert such exemption if the Grantor itself believes in good faith that an exemption applies to the requested records. The Grantor shall not be liable to the Grantee for releasing records not clearly identified

by the Grantee as confidential or proprietary. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to Grantor upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by Grantor's authorized representative(s) or agent(s) during the course of technical inspections as reasonably conducted by Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Franchise Area;

(3) Number of current subscribers by Tier;

(4) Total homes passed for the previous twelve (12) months;

(5) A list of current Cable Services, rates and Channel line-ups; and

(6) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least three (3) years, and individual Subscriber complaints from the Grantor for a period of at least one (1) year, and make such information available to Grantor at Grantee's office upon reasonable request.

(B) Subject to subsection 7.2, all information furnished to Grantor is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within ninety (90) days of Grantor's written request, Grantee shall submit to Grantor a written report for the prior calendar year, in a form acceptable to Grantor, which shall include, but not necessarily be limited to, the following information for Grantor:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A statement of planned construction, if any, for the next year; and,

(C) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request from Grantor, Grantee shall submit to Grantor copies of all pleadings, applications, notifications, public communications and public documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints.

(B) Within thirty (30) days of a written request, Grantee shall provide Grantor a quarterly summary, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by Grantor to Grantee; and,

7.7 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;

- (B) Washington news, weather & information;
- (C) Sports;
- (D) General entertainment;
- (E) Children's programming;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of Grantor.

8.3 Obscenity

Grantee shall not transmit or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service. For the purposes of this subsection, "uninterrupted" does not include outages of the Cable System for maintenance or testing or an event covered under Section 4.11.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) Grantor may authorize Designated Access Providers to control, operate, and manage the use of any and all Access Facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Grantor or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise, the FCC, federal and State law. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

9.2 Channel Capacity and Use

(A) Grantee shall make available to Grantor up to five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within one hundred eighty (180) days after a written request for such use is submitted to Grantor, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to the Channels provided to Grantor. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to

require the return of the Channel or portion thereof. Grantor shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within one-hundred eighty (180) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide the existing three (3) Activated Downstream Channel for PEG Access use in a standard definition (“SD”) digital format. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channels. At such time as the HD Access Channels described in subsection (C) below are activated, the Designated Access Provider will provide only an HD Access Channel Signal in an HD format. At that time, Grantee will broadcast the HD signal on the HD Access Channels and also down-convert the HD signal for additional broadcast on the SD Access Channels. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and not unreasonably discriminate as to the application of any applicable FCC Rules & Regulations.

(2) With respect to signal quality, Grantee shall not be required to carry SD Access Channels in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute all SD Access Channel signals without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this subsection 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point, which for the purposes of this subsection 9.2 (C)(3), shall mean up to but not including the modulator where the Grantor signal is converted into a format to be transmitted over a fiber connection to Grantee. The Grantor or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which SD Channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

(1) After the return lines have been upgraded in accordance with Section 9.11 and within one hundred twenty (120) days’ written notice, Grantee shall activate one (1)

HD Access Channels, for which the Grantor may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. After the first anniversary of the first HD Channel activation, and with at least one hundred twenty (120) days written notice to Grantee, Grantor may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in HD”) digital format.

- (a) The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for any newly activated HD Access Channel; and,
- (b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement.

(2) Grantor shall be responsible for providing HD Access Channel signals in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channels. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signals on its Cable System and shall not discriminate against the HD Access Channels with respect to accessibility, functionality, and to the application of any applicable FCC Rules & Regulations. With respect to signal quality, Grantee shall not be required to carry the HD Access Channels in a higher quality format than that of the HD Access Channel signals delivered to Grantee, but Grantee shall distribute the HD Access Channel signals without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of this subsection 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) Grantor or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) The Designated Access Provider shall be responsible for providing the Access Channel signals in an HD format to the demarcation point at the designated point of origination for each Access Channel. Grantee shall provide all necessary equipment outside the demarcation point at the Designated Access Provider Channel origination point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(E) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the served by the same Headend as Grantor for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide Grantor a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed. Grantee, at Grantee's expense, will place the Grantor's notice of the Access Channel changes on or with its regular monthly billing, upon the Grantor's request. Such request shall be for one notice per occurrence of Access Channel changes, whether one or more channels are affected. Grantor shall be responsible for the costs of printing its notice which must conform to Grantee's reasonable mailing requirements and providing them to the Grantee. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Support for Access Costs

(A) As of the Effective Date of this Franchise Agreement, Grantee is providing thirty cents (\$0.30) per month per Residential Subscriber (the "PEG Contribution") to be used solely for

capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. Upon ninety (90) days written notice from the Grantor, the PEG Contribution may be increased to up to fifty cents (\$0.50) per month per Residential Subscriber. Any written request by Grantor to increase the PEG Contribution from its then current level shall be effective ninety (90) days after the date of such written request. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantor shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access.

(B) During the term of this Franchise, Grantee may inquire of Grantor about the PEG Contribution being collected at that time. Upon Grantee's request, Grantor shall meet with Grantee to discuss issues related to the PEG Contribution in good faith and the parties may mutually agree to adjust the PEG fee accordingly.

9.6 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Grantor. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.7 Access Channels on Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.8 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If Grantor implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then Grantor shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.9 Technical Quality

Grantee shall maintain all Upstream and Downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. In no event shall the technical quality of any Access channels be lower than the quality of other commercial SD or HD channels carried on the Cable System. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Grantor's facilities for the Access Channels provided under this Franchise Agreement. Grantee shall also provide, if requested in advance by Grantor, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on Grantor's side of the demarcation point. Grantee shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment. Grantor shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantor staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantor's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff.

9.10 Access Cooperation

Grantor may designate any other jurisdiction to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Grantor in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Grantor.

9.11 Return Lines/Access Origination

(A) Grantee shall maintain the return lines from the existing Access origination sites to the Headend in order to enable the distribution of Access programming to Subscribers on the Access Channels. To the extent that any return line upgrades are required in order to facilitate delivery of Access Programming in HD, such upgrades shall be completed within one (1) year of a written request from Grantor; provided however, that Grantee may recover the costs of such upgrades from Subscribers in the Franchise Area in accordance with Applicable Law and that in so doing the PEG Contribution does not exceed fifty (\$.50) cents in total. If such costs result in exceeding fifty (\$.50) cents then the Grantor shall reduce the existing PEG Contribution amount so as to allow for the recoupment of all upgrade costs without exceeding the cap of fifty (\$.50) cents over a period of three (3) years. Grantee shall continuously maintain these return lines throughout the term of the Franchise, unless any of these locations are no longer used in the future to originate Access programming or are not upgraded as part of the HD conversion. The existing return line facilities are noted as "exterior" to reflect a return line on the physical property but not extending into the building, or "interior" where the return line connection extends into the building itself. The cost to convert facilities from exterior to interior shall be paid by the Grantor:

Olympia City Hall - 601 4th Avenue East, Olympia, WA (interior)

The Washington Center for the Performing Arts, 512 Washington St SE,
Olympia, WA (exterior)

The Evergreen State College, Community Center Bldg. 113. 4300 Indian Pipe
Loop NW Olympia, WA (interior)

Lakefair Queen's Coronation, south side of 5th Ave. SW & Sylvester Street SW,
Olympia WA (exterior)

(B) Within eighteen (18) months of written request by the Grantor, Grantee shall construct and maintain additional return lines to other locations within the Franchise Area; provided however, that all Grantee's construction costs shall be paid by the Grantor or its Designated Access Provider(s).

9.12 Promotion of PEG Access Schedule

The Grantee shall include appropriate designation of the PEG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, generally applicable Municipal Code, Right-of-Way Construction Standards, and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of Grantor, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts which Grantee needs to occupy within the Franchise Area.

10.3 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices consistent with applicable permit requirements.

10.4 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from Grantor. As part of the permitting process, Grantor may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) Grantor Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State and Grantor safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards. All installations of equipment shall be permanent in nature, and final equipment placement shall not interfere with the travel and use of public places by the public.

10.7 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, Grantor's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements Grantor may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.8 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. Further, any street cuts made and repaired shall be performed in accordance with all Grantor construction codes.

10.9 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) The provisions of Section 5.1 shall apply to any claims against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

10.10 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to Grantor and to the notification association established in Ch. 19.122 RCW, as such may be amended from time to time.

Within forty-eight (48) hours after any Grantor bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.11 Notice to Private Property Owners

Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, Grantee shall give at least three (3) days advance notice to private property

owners or legal tenants of work on or adjacent to private property prior to entering upon private premises. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

10.12 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of Grantor or applicable State or federal law, or Grantor project Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of undergrounding an extension of the Cable System or for placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of Grantor or any other Person.

(F) Grantee and Grantor recognize that situations may occur in the future where Grantor may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. Grantee agrees to cooperate with Grantor in any construction by the Grantee that involves trenching or boring, provided that Grantor has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring and Grantor enters into a contract with Grantee consistent with RCW

80.36.150, this Franchise and applicable provisions of Grantor's Code. Grantee shall allow Grantor to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided there is reasonable space available and Grantor shares in the cost of the trenching and boring on the same terms and conditions as the Grantee or otherwise in accordance with Applicable Law. Grantor shall be responsible for maintaining its respective cable, conduit, vaults and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

(G) Where Grantor codes provide holders of building or development permits for planned developments within the Franchise Area to notify utilities and other similar service providers of availability of open trenches, it is the intent of Grantor that such requirements shall include operators of cable systems in the list of entities required to be provided notice by the permit holder. In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a Grantor designated capital improvement project, this Franchise shall in no way limit the Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

10.13 Prewiring

Any ordinance or resolution of Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.14 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage, when performing work as it pertains to using the Right of Way. If damage is caused by Grantee, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay Grantor.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

10.15 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any Grantor Right-of-Way, or upon the addition to Grantor of any area in which Grantee owns or operates any such facility, Grantee shall, at Grantor's request, submit to Grantor a statement describing all such facilities located in the Right of Way, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.16 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest at no cost to Grantor. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.17 Movement of Cable System Facilities for Grantor Purposes

Grantor shall have the right to require Grantee to, at Grantor's request, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of Grantee's facilities may be needed by public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by Grantor for public purposes. Such work shall be performed at Grantee's expense. Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' written notice by Grantor, or such longer period as Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of Grantor. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000) in expenditures by Grantor, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, Grantor shall provide at least one-hundred twenty (120) days' written notice to Grantee. Following notice by Grantor, if all users of the Right-of-Way relocate aerial

facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities, if it desires to continue to occupy that particular Right of Way. If Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, Grantor will work collaboratively with Grantee to identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

If Grantee fails to complete this work within the time prescribed above and to Grantor's satisfaction, Grantor may cause such work to be done and bill the cost of the work to Grantee. In such event, Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within forty-five (45) days of receipt of an itemized list of those costs, Grantee shall pay Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any damage claim against Grantor, Grantee shall be responsible to Grantor for documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by Grantor of Grantee's responsibility for the delay and/or costs for construction delays related to an alleged failure to act in accordance with this subsection 10.17.

10.18 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another franchise holder, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.19 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the permit holder, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the permittee, and the Grantor will not be the administrator of these transactions.

10.20 Reservation of Grantor Use of Right-of-Way

Nothing in this Franchise shall prevent Grantor or public utilities owned, maintained or operated by public entities other than Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.21 Tree Trimming

Trees shall be maintained per ANSI A300, Standard Practices for Trees, Shrubs and other Woody Plant Maintenance. Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System. The adjacent property owner shall be notified by the Grantee of the tree removal or trimming. All tree trimming shall be done at Grantee's sole cost and expense.

10.22 Stop Work

(A) On notice from Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by Grantor.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

Grantee shall be liable for all costs incurred by Grantor and associated with Grantee's violation and Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

10.23 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Prior to the Effective Date of this Franchise, the parties acknowledge that Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the-node system architecture, with Fiber Optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. The Cable System is now and shall throughout the term of this Franchise, deliver high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and the City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than thirty (30) days following receipt of a request.

11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested in accordance with Applicable Law.

11.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including but not limited to the FCC) technical standards, as they may be amended from time to time. Grantor shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.5 Cable System Performance Testing

(A) Grantee shall maintain written records of all results of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to Grantor upon reasonable request.

(B) Grantee shall perform any tests required by the FCC.

11.6 Additional Tests

Where there exists other evidence which in the judgment of Grantor casts doubt upon the reliability or technical quality of Cable Service, Grantor shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with Grantor in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement may be extended if underground construction permitting would preclude such connection within that time period. Except as otherwise provided herein, Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor;

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with Section 4.2 above.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of twenty five (25) residences per mile of aerial feet of trunk or distribution cable or sixty (60) residences per mile of underground trench feet of trunk or distribution cable. If the residential density is less than twenty five (25) residences per 5,280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per mile of underground trench feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty five (25) or sixty (60), as applicable. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to Grantor, contesting Grantor's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify Grantor in writing and in detail as to the exact steps that will be taken and the

projected completion date. In such case, Grantor may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or Grantor orders a meeting in accordance with subsection (A)(3), Grantor shall set a meeting to investigate said issues or the existence of the alleged default. Grantor shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, Grantor determines that a default exists, Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure within such time to Grantor's reasonable satisfaction, Grantor may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of Grantor to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.3 Assessment of Monetary Damages

(A) Subject to the terms of this Franchise, Grantor may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, (ii) up to two hundred fifty dollars (\$250.00) per day for violations of PEG obligations, payment obligations or any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for

defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Grantor shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Grantor by reason of the breach of this Franchise.

13.4 Revocation

(A) Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding Grantor and Grantee;

(2) Grantee abandons the Cable System, or terminates the Cable System's operations;

(3) Grantee fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System); or

(4) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon Grantor or Subscribers; or

(5) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(6) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and provisions of this Franchise.

(D) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If Grantor determines that the Franchise is to be revoked, Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.5 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months,

unless a sale of the Cable System can be closed sooner or Grantee demonstrates to Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from Grantor at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to Grantor's satisfaction, after written notice to Grantee, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or Grantor may recover the costs through the letter of credit provided by Grantee.

(D) Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

13.6 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, Grantor shall have the option to purchase the Cable System.

(B) Grantor may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from Grantor within which to accept or reject the offer.

(C) In any case where Grantor elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of Grantor's audit of a current profit and loss statement of Grantee. Grantor shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but

with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which Grantor would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.7 Receivership and Foreclosure

(A) At the option of Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and conditions of this Franchise.

13.8 No Monetary Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities Grantor may enjoy under federal, State or local law.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to Grantor, or until the Franchise is revoked and a new franchisee is selected by Grantor; or obtain an injunction requiring the Grantee to continue operations. If Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse Grantor or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

Grantor shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless there is a situation constituting Force Majeure or Grantor authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) Grantor and Grantee agree that any proceedings undertaken by Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as

provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of Grantor, which consent shall be by the City Council, acting by ordinance/resolution.

(B) The Grantee shall promptly notify Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to Grantor for its approval of a sale or transfer and furnish all information required by law and Grantor.

(D) In seeking Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that Grantor may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) Grantor shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. Grantor and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by Grantor, Grantee shall file with Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist Grantor in so inquiring. Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of Grantor; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Cable Communications Management, LLC
Attention: Franchising
900 132nd Street SW
Everett WA 98204

With a copy To:

Comcast Cable
Attention: Franchising
410 Valley Ave. NW, Suite 9
Puyallup WA 98371

Grantor's address shall be:

City Clerk
City of Olympia
601 4th Ave. E.
Olympia WA 98501

With a copy to:

City Attorney
City of Olympia
601 4th Ave. E.
Olympia WA 98501

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse Grantor for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of Grantor at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of Grantor hereafter to enforce the same. Nor shall the waiver by Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any dispute related to enforcement or interpretation of this Franchise shall be in an appropriate state court of competent jurisdiction in Thurston County, Washington, or in the United States District Court for the Western District of Washington at Tacoma.

IN WITNESS WHEREOF, this Franchise is signed in the name of City of Olympia, Washington this _____ day of _____ 2021.

CITY OF OLYMPIA, WASHINGTON:

Steven J. Burney, City Manager

ATTEST:

APPROVED AS TO FORM:

Sean Krier, City Clerk

Mark Barber, City Attorney



City Council

Approval of the Eastside Street Art Crossing Concept Plan

Agenda Date:
Agenda Item Number: 6.A
File Number: 21-0004

Type: recommendation **Version:** 1 **Status:** Other Business

Title

Approval of the Eastside Street Art Crossing Concept Plan

Recommended Action

Committee Recommendation:

The Arts Commission recommends Council approval of the Eastside Street Art Crossing concept plan.

City Manager Recommendation:

Move to approve the Eastside Street Art Crossing Public Art concept plan as recommended by the Arts Commission.

Report

Issue:

Whether to approve the Eastside Street Art Crossing Public Art concept plan. If approved, the final concept will return to the Arts Commission on February 11 for refining of structural details. When those details are finalized, the project artist will move into fabrication. Installation and project completion are projected for fall of 2021.

Staff Contact:

Stephanie Johnson, Arts Program Manager, Parks, Arts & Recreation, 360.709.2678

Presenter(s):

Stephanie Johnson, Parks, Arts & Recreation
Andrea Wilbur-Sigo, Eastside Street Art Crossing Project Public Artist

Background and Analysis:

On July 7, 2020, the City Council approved the Arts Commission's recommendation of Andrea Wilbur-Sigo as the project artist for the Eastside Street Art Crossings Project. The five-member jury that formed the recommendation included a member of the Planning Commission, the Eastside Neighborhood Association (ENA), and Indian Creek Neighborhood association (ICNA) in addition to one Arts Commissioner and the City's on-call Landscape Architect.

On September 4, Ms. Wilbur-Sigo participated in a site tour, meeting with the City's Historic Preservation Officer and Transportation Engineer, to better understand the site. On October 14, Ms. Wilbur-Sigo met with members of the adjacent neighborhoods - Eastside Neighborhood Association (ENA) and Indian Creek Neighborhood Association (ICNA) and the general public, to better understand the community around the site. She has also had the opportunity to review the Art Crossing Master Plan and the Washington State Arts Commission Materials and Fabrication Handbook.

The Arts Commission conducted a public hearing on December 10 to receive and collect feedback from the public regarding the Eastside Street Art Crossing concept plan. Ms. Wilbur-Sigo shared her concept presentation for the Eastside Street location. Entitled "Unity," the proposal of two, 10' tall cedar carvings, are reflective of the house posts of the Salish dwellings that once covered all the shores of the Salish Sea. Representing the Tree People and the People of the Water, the sculptures tell the story of community made stronger by standing together.

The Arts Commission and staff discussed the concept plan with Ms. Wilbur-Sigo. Seven people were in attendance, Kasia Pierzga spoke in favor of the concept plan.

In addition to the Arts Commission Public Hearing, staff will share the artist's concept plan with

- the Coalition of Neighborhood Associations on January 10
- ENA leadership committee on January 13
- the Planning Commission on January 25
- the Heritage Commission agenda in January or February

Neighborhood/Community Interests (if known):

The Eastside and Indian Creek Neighborhood Associations have been very involved in this project, from the Master Plan stage through to artist selection and community input.

Options:

Approve the Eastside Street Art Crossing Public Art concept plan as presented

Do not approve the plan and provide feedback to the Arts Commission

Do not approve the concept plan

Financial Impact:

Budget for the artwork is \$50,000 from the Municipal Art Fund

Attachments:

Eastside Street Art Crossing Concept Plan

"Unity"

Art Crossing Project artist Andrea Wilbur-Sigo shared her concept presentation for the Eastside Street location. Entitled "Unity," the proposal of two, 10' tall cedar carvings, are reflective of the house posts of the Salish dwellings that once covered all the shores of the Salish Sea. Representing the Tree People and the People of the Water, the sculptures tell the story of community made stronger by standing together.



People of the Water

These house post will stand 10' tall x 32" wide x 10" thick
They will be carved in old growth red cedar in a dimensional form that will include adzing which is only achieved thru using the same D-adze that has been used since the beginning of time

The Tree People