



CITY OF LAKE FOREST PARK CITY COUNCIL REGULAR MEETING

Thursday, July 14, 2022 at 7:00 PM

Meeting Location: In Person and Virtual / Zoom
17425 Ballinger Way NE Lake Forest Park, WA 98155

INSTRUCTIONS FOR PARTICIPATING IN THIS MEETING VIRTUALLY:

Please note, this link works for both the Special Work Session (6:00 p.m.) and Regular Meeting (7:00 p.m.).

Join Zoom Webinar: <https://us06web.zoom.us/j/89896180737>
Call into Webinar: 253-215-8782 | Webinar ID: 898 9618 0737

The City Council is providing opportunities for public comment by submitting a written comment or by joining the meeting webinar (via computer or phone) or by attending in person to provide oral public comment.

HOW TO PARTICIPATE WITH ORAL COMMENTS:

Sign up here <https://app.waitwhile.com/welcome/comment-sign-up> between 9:00 a.m. and 5:00 p.m. on the day of the meeting to provide Oral Comments during the meeting.

If you are in person at the meeting, there is a sign in sheet located near the entrance to the Council Chambers. Simply fill the form out and the Mayor will call your name at the appropriate time. Oral comments are limited to 3:00 minutes per speaker.

If you are attending the meeting via Zoom, in order to address the Council during the Public Comment section of the agenda, please use the “raise hand” feature at the bottom of the screen. Oral comments are limited to 3:00 minutes per speaker. Individuals wishing to speak to agenda items will be called to speak first in the order they have signed up. The City Clerk will call your name and allow you to speak. Please state your name and whether you are a resident of Lake Forest Park. The meeting is being recorded.

HOW TO SUBMIT WRITTEN COMMENTS:

<https://www.cityofflp.com/615/Hybrid-City-Council-Meetings> (use CTRL+CLICK to open this link)

Written comments for public hearings will be submitted to Council if received by 5:00 p.m. on the date of the meeting; otherwise, they will be provided to the City Council the next day. Because the City has implemented oral comments, written comments are no longer being read under Citizen Comments.

As allowed by law, the Council may add and take action on items not listed on the agenda. For up-to-date information on agendas, please visit the City’s website at www.cityofflp.com

Meetings are shown on the city’s website and on Comcast channel 21 for subscribers within the Lake Forest Park city limits.

AGENDA

1. CALL TO ORDER: 7:00 PM

2. PLEDGE OF ALLEGIANCE

3. ADOPTION OF AGENDA

4. PUBLIC HEARINGS

A. Public Hearing on Ordinance 1241 – Code Amendments for National Pollutant Discharge Elimination System (NPDES) Source Control Program Creation and Stormwater Design Manual Updates.

- Staff presentation
- Questions from Council
- Open the public hearing for comments (3 minutes per speaker)
- Staff address questions that may have been presented during public comments and from Council.

5. CITIZEN COMMENTS

*This portion of the agenda is set aside for the public to address the Council on agenda items or any other topic. The Council may direct staff to follow up on items brought up by the public. **Comments are limited to a three (3) minute time limit.***

6. CONSENT CALENDAR

The following items are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which case the item will be removed from the Consent Calendar in its normal sequence on the agenda.

A. June 21, 2022 - Special Committee of the Whole Meeting Minutes

B. June 23, 2022 - Special Work Session Meeting Minutes.

C. June 23, 2022 - Regular Meeting Minutes

D. City Expenditures for the Period Ending July 14, 2022

7. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION / REFERRAL

A. Ordinance 1245 - amending chapter 16.14 of the Lake Forest Park Municipal Code, Tree Canopy Preservation and Enhancement

- B. Ordinance 1246 - creating a salary commission to set the salaries and benefits for Lake Forest Park elected officials.

8. ORDINANCES AND RESOLUTIONS FOR COUNCIL DISCUSSION

- A. Ordinance 1242 Authorizing the Mayor to Sign a non-exclusive Franchise Agreement with Puget Sound Energy, Inc. for providing electric and natural gas service.
- B. Ordinance 1243 granting XO Communications, LLC, a Master Use Permit in the public right-of-way of Lake Forest Park for a telecommunications system
- C. Ordinance 1244 granting MCImetro Access Transmission Services Corporation a Master Use Permit in the public right-of-way of Lake Forest Park for a telecommunications system

9. ORDINANCES AND RESOLUTIONS FOR ACTION

- A. Resolution 1850 – Interagency Reimbursement Agreement between Washington State Administrative Office of the Courts and Lake Forest Park Municipal Court for reimbursement costs related to the Blake decision
- B. Resolution 1851 – Memorandum of Understanding regarding Municipal Court Security

10. COUNCIL DISCUSSION AND ACTION

11. OTHER BUSINESS

12. COUNCIL COMMITTEE REPORTS

- A. Councilmember Reports
- B. Mayor's Report
- C. City Administrator's Report

13. ADJOURN

FUTURE SCHEDULE

--Thursday, July 21, 2022 City Council Budget & Finance Committee Meeting 6 pm *hybrid meeting* (Zoom and City Hall)

--Monday, July 25, 2022 City Council Committee of the Whole Meeting 6 pm *hybrid meeting* (Zoom and City Hall)

--Thursday, July 28, 2022 City Council Special Work Session Meeting 6 pm *hybrid meeting* (Zoom and City Hall)

--Thursday, July 28, 2022 City Council Regular Business Meeting 7 pm *hybrid meeting* (Zoom and City Hall)

As allowed by law, the Council may add and take action on items not listed on the agenda

Any person requiring a disability accommodation should contact city hall at 206-368-5440 by 4:00 p.m. on the day of the meeting for more information.



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	July 14, 2022
Originating Department	Public Works
Contact Person	Andrew Silvia
Title	Ordinance – Code Amendments for NPDES Source Control Program Creation and Stormwater Design Manual Updates.

Legislative History

- First Presentation – May 26, 2022
- Second Presentation – July 14, 2022
- Action –

Attachments:

1. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AMENDING CHAPTER 16.25 OF THE LAKE FOREST PARK MUNICIPAL CODE, WATER QUALITY, AND AMENDING THE FOLLOWING RELATED SECTIONS OF THE LFPMC 16.08.030, 16.08.070, 16.16.330, 16.24.010, 16.24.631, 16.24.632, 18.48.030, and 18.58.090; PROVIDING FOR SERVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Executive Summary

The attached ordinance amending six chapters of the Lake Forest Park Municipal Code will update the code’s numerous references to the King County’s Surface Water Design Manual (Design Manual) to reflect the current 2021version. The proposal to adopt all future amendments to the Design Manual has been deleted from the current version of the draft ordinance, but code references have been consolidated making future amendments easier. The ordinance will also establish a requirement for owners of pollutant generating sites to apply source control best management practices. The Western Washington 2019-2024 National Pollutant Discharge Elimination System (NPDES) Phase 2 Municipal Stormwater Permit (“Permit”) requires adoption of the source control best management practices and that the City adopt a current surface water design manual equivalent to the manual issued by the State of Washington Department of Ecology.

Background

The Permit (Section S5.C.8) requires the implementation of a source control program for existing development and defines specific elements that must be included in the program. The first step (S5.C.8.b.i) required of permittees in implementing the source control program is to enact an ordinance establishing stormwater pollution prevention requirements for a limited number of existing public and private sites. The sites to be regulated under this new program are those that host the pollutant generating activities defined in Appendix 8 of the Permit. These include Heavy Construction, Chemical and Equipment Manufacturing, Printing and Support Activities, and other commercial and industrial activities. The source control measures that these site owners will be required to implement are defined in the King County Stormwater Pollution Prevention Manual. These include good housekeeping measures such as proper waste disposal, sweeping, labelling chemical containers appropriately, and other measures. The Department of Public Works (DPW), through its consultant Parametrix, Inc., is currently developing an inventory of regulated sites and will be required to inspect 20% of these sites annually starting in 2023.

Separately, the Permit (Section S5.C.6.a) requires that the City enact an ordinance adopting the Permit's updated stormwater management performance standards for regulated types of development. This is a routine Permit requirement that ensures the City's standards for drainage plan review and stormwater pollution prevention during construction are updated for consistency with the state's standards. Permittees satisfy this requirement by adopting the current version of the state's stormwater management design manual, or an approved equivalent. The City has adopted and used the King County Surface Water Design Manual as its chosen resource to satisfy this requirement since it was first required in 2007, and must now update the code's references to the current version of the manual. The proposed ordinance would adopt King County's current Design Manual dated 2021.

Fiscal & Policy Implications

There is no impact to the City budget that will result directly from this action. Starting in 2023, DPW will be required to undertake inspections of regulated sites, maintain its site inventory, manage inspection-related resources, and conduct other programmatic work. DPW's consultant is currently developing an array of resourcing strategies and associated costs applicable to the new regulatory program, which DPW anticipates sharing with Council during development of the City's next biennial operating budget.

Alternatives

<i>Options</i>	<i>Results</i>
Enact Ordinance ###	The City will remain in compliance with the Permit. DPW will continue working to develop the new source control program and assign resources to implement it. Additionally, future regulated land development and construction activities will be held to the stormwater management performance standards in the 2021 version of the King County Surface Water Design Manual.
Do Not Enact Ordinance ###	The City will fail to comply with Sections S5.C.6.a and S5.C.8.b.i. of the Permit. This could potentially lead to monetary penalties assessed by the Department of Ecology.

Staff Recommendation

Move to enact Ordinance ###.

ORDINANCE NO. 1241

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AMENDING CHAPTER 16.25 OF THE LAKE FOREST PARK MUNICIPAL CODE (LFPMC), WATER QUALITY; AND AMENDING THE FOLLOWING RELATED SECTIONS OF THE LFPMC 16.08.030, 16.08.070, 16.16.330, 16.24.010, 16.24.631, 16.24.632, 18.48.030, and 18.58.090; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lake Forest Park is required to comply with the Western Washington Phase II Municipal Stormwater Permit, National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for discharges from Small Municipal Separate Storm Sewers in Western Washington (NPDES Phase II Permit), issued on July 1, 2019; and

WHEREAS, Section S5.C.8 of the NPDES Phase II Permit requires the implementation of a source control program for existing development and sets out specific elements that must be included in the program and dates by which they must be implemented; and

WHEREAS, the City of Lake Forest Park currently regulates source control through Chapter 16.25 of the Lake Forest Park Municipal Code (LFPMC), which includes some, but not all, of the elements of the program required by the NPDES Phase II Permit; and

WHEREAS, the NPDES Phase II Permit provides that the requirements of Section S5.C.8 of the Permit may be met by using the source control BMPs in a Phase I Program approved by the State of Washington Department of Ecology (Ecology), which includes the King County Stormwater Pollution Prevention Manual and King County Surface Water Design Manual (KCSWDM); and

WHEREAS, Section S5.C.6 of the NPDES Phase II Permit requires either the adoption of minimum requirements, thresholds, and definitions for new development, redevelopment, and construction activity in Appendix 1 of the Permit or adoption of a Phase 1 Program approved by Ecology, which includes the KCSWDM; and

WHEREAS, several sections of the LFPMC include references to an outdated version of the KCSWDM that must be updated to satisfy the requirements of NPDES Phase II Permit Section S5.C.6; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act, Chapter 43.21C RCW, pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance (“DNS”) was issued on June 20, 2022; and

WHEREAS, in accordance with the requirements set forth in RCW 36.70A.106, the City provided the Washington State Department of Commerce (Commerce) notice of the City’s intent to adopt the proposed amendments on _____, June 9, 2022, and received notice that Commerce had granted expedited review on _____; June 23, 2022; and

WHEREAS, the City Council held public meetings to review amendments to Chapter 16.25 LFPMC and other related sections of the LFPMC during study sessions and regular meetings on May 26, 2022; July 14, 2022, _____; and

WHEREAS, the City Council held a public hearing on July 14, _____, 2022, regarding the proposed amendments; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.08.030 LFPMC, Definitions, as follows:

...

8. “Design Manual” shall mean the 2016-2021 King County Washington Surface Water Design Manual, as now existing, which is adopted by reference in Chapter 16.24 LFPMC.

...

Section 2. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.08.070 LFPMC, Definitions, as follows:

...

FF. Rockeries. Rockeries may be used for erosion protection of cut or fill slopes. The primary function of a rockery is to protect the slope face from soil erosion and sloughing.

1. Rockeries used to protect uncontrolled fill slopes may be no higher than four feet, as measured from the bottom of the base rock.

2. Rockeries used to protect cut slopes or reinforced or engineered fill slopes may be up to a maximum height of 12 feet, as measured from the bottom of the base rock, with the approval of the building and planning department. Any rockery that is over four feet high as measured from the bottom of the base rock (cut slopes and reinforced or engineered fill slopes only) shall be designed by a geotechnical engineer.

3. A wall drain must be provided for all rockeries greater than four feet in height as measured from the bottom of the base rock. The drains shall be installed in accordance with applicable standards from the [2016 King County Surface Water](#) Design Manual.

4. The geotechnical engineer must provide construction monitoring and/or testing as required by the permit conditions, and submit construction inspection reports to the department for all rockeries that require design by a geotechnical engineer. For each project, or phase of a project, the geotechnical engineer must provide a final letter or report summarizing the results of the construction monitoring for each rockery, verifying that the rockery construction meets the geotechnical recommendations and design guidelines. The final letter or report must be submitted to the city of Lake Forest Park prior to the final clearing and grading inspection.

...

Section 3. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.16.330 LFPMC, Wetlands – Permitted alterations, as follows:

...

B. Alterations to wetlands and their buffers may only be allowed for the following activities, in addition to any established in LFPMC 16.16.220 and 16.16.230, if the city determines that there is no practical alternative location for the proposed activity with less adverse impacts on the wetlands or its buffer, subject to mitigation requirements set forth in this chapter:

...

5. Stormwater Management Facilities. A wetland or its buffer may be physically or hydrologically altered to meet the requirements of an LID, runoff treatment, or flow control BMPs if all of the criteria below are met. Stormwater LID BMPs required as part of new and redevelopment projects may be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization by a qualified professional is required to determine if and demonstrate that an LID BMP is feasible at the project site.

- a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of three to four points; and
- b. There will be “no net loss” of functions and values of the wetland; and
- c. There is no adverse effect on existing wetland plant communities by increasing the duration and magnitude of water level fluctuations; and
- d. The wetland does not contain a breeding population of any native amphibian species; and
- e. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4 and questions 2, 3, and 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach”; or the wetland is part of a priority restoration plan that achieves restoration goals identified in a shoreline master program or other local or regional watershed plan; and
- f. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
- g. All regulations regarding stormwater and wetland management are followed, including but not limited to [2016 King County Surface Water the Design Manual as defined in LFPMP 16.08.030](#) and/or other local and state wetland and stormwater codes, manuals, and permits; and
- h. The structure of a wetland or its soils is not altered, or if they are altered, modification will require permits and mitigation according to LFPMP 16.16.340 so that existing functions and values are not lost.

...

Section 4. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.24.010 LFPMP, Purpose, as follows:

A. The city council finds that this chapter is necessary to promote sound development policies and construction procedures which respect and preserve the city’s watercourses; to minimize water quality degradation and control of sedimentation of creeks, streams, ponds, lakes, and other water bodies; to protect the life, health, and property of the general public; to preserve and enhance the suitability of waters for contact recreation and fish habitat; to preserve and enhance the aesthetic quality of the waters; to maintain and protect valuable groundwater quantities, locations, and flow patterns; to ensure the safety of city roads and rights-of-way; and to decrease drainage-related damages to public and private property.

B. Surface Water Design Manual Adopted. The ~~2016~~ King County Washington Surface Water Design Manual as defined in LFPMC 16.08.030, ~~as now existing~~, is hereby adopted by reference and is hereinafter referred to as the Design Manual.

Section 5. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.24.631 LFPMC, Property owner responsible for stormwater system maintenance, as follows:

A. Any person or persons holding title to a property for which stormwater facilities and BMPs have been required by the city of Lake Forest Park shall be responsible for the continual operation, maintenance and repair of the stormwater facilities and BMPs in accordance with the provisions of this chapter.

B. For privately maintained stormwater facilities, the maintenance requirements specified in the ~~2016 King County Surface Water~~ Design Manual's Appendix A, Maintenance Requirements for Flow Control, Conveyance and Water Quality Facilities, shall be enforced against the owner(s) of the subject property served by the stormwater facility.

Section 6. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.24.632 LFPMC, Maintenance covenant required for privately maintained drainage facilities, as follows:

Prior to the beneficial use of a project constructed under a city building permit or a stormwater discharge permit, the owner shall record a maintenance covenant which guarantees the city of Lake Forest Park that the stormwater facilities shall be properly operated, maintained and inspected. The restrictions set forth in such covenant shall be approved by the city, included in any instrument of conveyance of the subject property, and shall be recorded with the King County recorder's office.

A. Maintenance covenants shall remain in force for the life of the development, or until the responsibility for the operation and maintenance of the subject stormwater facilities is accepted by the city of Lake Forest Park.

B. Maintenance covenants shall include the maintenance standards specified by the ~~2016 King County Surface Water~~ Design Manual's Appendix A, Maintenance Requirements for Flow Control, Conveyance and Water Quality Facilities, a list of maintenance activities and proposed inspection intervals for each element of the private stormwater system, and a guarantee that any maintenance necessary for any element of the stormwater system will be performed to the standards specified by the ~~2016 King County Surface Water~~ Design Manual's Appendix A, Maintenance Requirements for Flow Control, Conveyance and Water Quality Facilities, and within the following schedule:

1. Within one year for wet pool facilities and retention/detention ponds;

2. Within six months for typical maintenance;
3. Within nine months for maintenance requiring revegetation;
4. Within two years for maintenance that requires capital construction of less than \$25,000.

Section 7. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.25.020 LFPMC, Definitions, as follows

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. “AKART” means “all known, available and reasonable methods of prevention, control and treatment.” “AKART” represents the most current methodology that can be reasonably required for preventing, controlling or abating the pollutants associated with a discharge. “AKART” applies to both point and nonpoint sources of pollution.

B. “Best management practices” or “BMPs” mean the best available and reasonable physical, structural, managerial or behavioral activities, that, when used singly or in combination, eliminate or reduce the contamination of both surface and groundwaters.

C. “Chapter” means this chapter and any administrative rules and regulations adopted to implement this chapter.

D. “Clean Water Act” means 33 U.S.C. 1251 et seq., and any subsequent amendments thereto.

E. “Director” means the Lake Forest Park city public works director, other department directors specified in enforcement procedures established in accordance with this chapter, or any of their designees.

F. “Discharge” means throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.

G. “Drainage facility” means a constructed or engineered feature that collects, conveys, stores or treats surface and stormwater runoff. “Drainage facility” includes, but is not limited to, a constructed or engineered stream, pipeline, channel, ditch, gutter, lake, wetland, closed depression, flow control or water quality treatment facility, erosion and sediment control facility and other structure and appurtenance that provides for drainage.

H. “Groundwater” means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir or other body of surface water, whatever may be

the geological formation or structure in which such water stands or flows, percolates or otherwise moves

I. “Hazardous material” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

J. “Illicit discharge” means any direct or indirect non-stormwater discharge to the city’s storm drain system, except as expressly allowed by this chapter.

K. “Illicit connection” means any manmade conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

L. “Municipal separate storm sewer system” (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned or operated by the city of Lake Forest Park;
2. Designed or used for collecting or conveying stormwater;
3. Which is not part of a publicly owned treatment works (POTW). “POTW” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and
4. Which is not a combined sewer. “Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.

M. “Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

N. “National Pollutant Discharge Elimination System” or “NPDES” means the national program for controlling pollutants from point source discharges directly into waters of the United States under the Clean Water Act.

O. “National Pollutant Discharge Elimination System (NPDES) permit” means an authorization, license or equivalent control document issued by the Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

P. “Person” means an individual and his or her agent or assign, municipality, political subdivision, government agency, partnership, corporation, business or any other entity.

Q. “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

R. “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

S. “Source control BMP” means a BMP intended to prevent contaminants from entering surface and stormwater or groundwater including the modification of processes to eliminate the production or use of contaminants. “Source control BMPs” can be either structural or nonstructural. Structural source control BMPs involve the construction of a physical structure on site, or other type of physical modification to a site. An example of a structural source control BMP is building a covered storage area. A nonstructural source control BMP involves the modification or addition of managerial or behavioral practices. An example of a nonstructural source control BMP is using less toxic alternatives to current products or sweeping parking lots.

T. “Source control inventory” means an inventory that identifies publicly and privately owned institutional, commercial, and industrial sites which have the potential to generate pollutants to the MS4 and shall include: (a) Businesses and/or sites identified based on the presence of activities that are pollutant generating, and (b) Other pollutant generating sources, based on complaint response, such as: home-based businesses and multi-family sites.

U. “State waste discharge permit” means an authorization, license, or equivalent control document issued by the Washington State Department of Ecology in accordance with Chapter 173-216 WAC.

V. “Storm drainage system” means publicly owned facilities, including the city’s municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and humanmade or altered drainage channels, reservoirs, and other drainage structures.

W. “Stormwater” or “surface water” means water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands, and shallow groundwater.

XW. “Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

YX. “Stormwater Pollution Prevention Manual” means the manual adopted in LFPMP 16.25.035, and supporting documentation referenced or incorporated in the manual, describing best management practices and procedures for existing facilities and existing and new activities not covered by the Surface Water Design Manual.

ZY. “Treatment BMP” means a BMP intended to remove contaminants once they are already contained in stormwater. Examples of treatment BMPs include oil/water separators, biofiltration swales and wetponds.

Section 8. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.25.025 LFPMP, Illicit discharge into Lake Forest Park waters, as follows

A. Illicit Discharges and Connections.

1. It is unlawful for any person to discharge any contaminants into surface and stormwater, the storm drainage system, groundwater or Lake Washington. Contaminants that, if discharged, would constitute an illicit discharge include, but are not limited to, the following:

- a. Trash or debris;
- b. Construction materials;
- c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- d. Antifreeze and other automotive products;
- e. Metals in either particulate or dissolved form;
- f. Flammable or explosive materials;
- g. Radioactive material;
- h. Batteries;
- i. Acids, alkalis, or bases;

- j. Paints, stains, resins, lacquers or varnishes;
- k. Degreasers and solvents;
- l. Drain cleaners;
- m. Pesticides, herbicides or fertilizers;
- n. Steam cleaning wastes;
- o. Soaps, detergents or ammonia;
- p. Swimming pool backwash;
- q. Chlorine, bromine and other disinfectants;
- r. Heated water;
- s. Domestic animal wastes;
- t. Sewage;
- u. Recreational vehicle waste;
- v. Animal carcasses;
- w. Food wastes;
- x. Bark and other fibrous materials;
- y. Collected lawn clippings, leaves or branches;
- z. Silt, sediment or gravel;
- aa. Dyes, except as stated in subsection (D) of this section;
- bb. Chemicals not normally found in uncontaminated water;
- cc. Any other process-associated discharge except as otherwise allowed in this section;
- dd. Any hazardous material or waste not listed above;
- ee. Spa and hot tub discharges that are not thermally controlled.

2. Illicit Connections. Any connection identified by the director that could convey anything not composed entirely of surface and stormwater directly to surface and stormwater or groundwater is considered an illicit connection and is prohibited with the following exceptions:

- a. Connections conveying allowable discharges;
- b. Connections conveying discharges pursuant to an NPDES permit, other than an NPDES stormwater permit, or a state waste discharge permit; and
- c. Connections conveying effluent from on-site sewage disposal systems to subsurface soils.

B. BMPs shall be applied to any business or residential activity that might result in prohibited discharges as specified in the Stormwater Pollution Prevention Manual or as determined necessary by the director. Activities that might result in prohibited discharges include but are not limited to following:

- 1. Potable water line flushing;
- 2. Lawn watering with potable water;
- 3. Dust control with potable water;
- 4. Automobile and boat washing;
- 5. Pavement and building washing;
- 6. Swimming pool and hot tub maintenance;
- 7. Auto repair and maintenance;
- 8. Building repair and maintenance;
- 9. Landscape maintenance;
- 10. Hazardous waste handling;
- 11. Solid and food waste handling; and
- 12. Application of pesticides.

C. Sites identified on the Source Control Inventory. BMPs shall be applied to business or residential activity that might result in prohibited discharges or to sites where those activities occur, as specified in the Stormwater Pollution Prevention Manual or as

~~determined necessary by the director, including any business or site identified in Lake Forest Park's source control inventory.~~ The inventory includes businesses and sites identified based on the presence of activities associated with the NAICS Code Major Groups 1152xx, 236-238, 311, 312, 321, 3221xx, 3222xx, 323, 325, 3241xx, 326, 316, 327, 331-336, 482, 484, 485, 493, 4881xx, 4882xx, 4884xx, 4889xx, 2211xx, 423140, 423930, 423110, 4233xx, 4237xx, 4238xx, 424930, 4244xx, 4246xx, 4247xx, 4248xx, 444, 445, 441, 447, 722, 5321xx, 5324xx, 811192, 8111xx, 8112xx, 8113xx, 8114xx, 621910, 6111xx, 6112xx, 6113xx, 6115xx, and 712. Those businesses and activities include, but are not limited to, the following, consistent with Appendix 8 to the Western Washington Phase II Municipal Stormwater Permit:

1. Support activities for animal production;
2. Construction of buildings;
3. Heavy and civil engineering construction;
4. Specialty trade contractors;
5. Beverage, food, and tobacco; wood product; and paper manufacturing;
6. Printing and related support activities;
7. Chemical; petroleum and coal; plastics and rubber; leather; nonmetallic mineral; primary and fabricated metal; machinery, computer and electronics; electrical equipment, appliance and component, and transportation equipment manufacturing;
8. Rail, transit and truck, transportation and support activities, including automobile dealers and gasoline service stations;
9. Utilities;
10. Wholesale trade of durable and nondurable goods;
11. Food and beverage stores, food services, and drinking places;
12. Rental and leasing services;
13. Repair and maintenance;
14. Ambulatory health care services and hospitals; and
15. Educational services, museums, historical sites, and similar institutions.

DC. The following types of discharges shall not be considered illicit discharges for the purpose of this chapter unless the director determines that the type of discharge, whether singly or in combination with other discharges, is causing significant contamination of surface and stormwater or groundwater:

1. Spring water;
2. Diverted stream flows;
3. Uncontaminated water from crawl space pumps, foundation drains or footing drains;
4. Lawn watering with potable water or collected rainwater;
5. Pumped groundwater flows that are uncontaminated;
6. Materials placed as part of an approved habitat restoration or bank stabilization project;
7. Natural uncontaminated surface water or groundwater;
8. Flows from riparian habitats and wetlands;
9. The following discharges from boats: engine exhaust; cooling waters; effluent from sinks; showers and laundry facilities; and treated sewage from Type I and Type II marine sanitation devices;
10. Collected rainwater that is uncontaminated;
11. Uncontaminated groundwater that seeps into or otherwise enters stormwater conveyance systems;
12. Air conditioning condensation;
13. Irrigation water from agricultural sources that is commingled with stormwater runoff; and
14. Other types of discharges as determined by the director.

ED. Dye testing is allowable but requires verbal notification to the director~~Lake Forest Park city engineer~~ at least one day prior to the date of test. The King County department of public health is exempt from this requirement.

EE. A person does not violate subsection A of this section if:

1. That person has properly designed, constructed, implemented and is maintaining BMPs and is carrying out AKART as required by this chapter, but contaminants continue to enter surface and stormwater or groundwater; or
2. That person can demonstrate that there are no additional contaminants being discharged from the site above the background conditions of the water entering the site.
3. A person who, under subsection (E)(1) of this section, is not in violation of subsection A of this section is liable for any prohibited discharges through illicit connections, dumping, spills, improper maintenance of BMPs or other discharges that allow contaminants to enter surface and stormwater or groundwater.
4. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The director by public rule may specify actions that qualify for this exception in city procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence.

GF. The public works department shall initiate an investigation within 21 days, or refer to the appropriate agency within seven days, of any reported or discovery of a suspected illicit connection. The public works department shall respond to all illicit discharges, including spills, which are determined to constitute a threat to human health, welfare or the environment. All known illicit connections to a system of conveyance owned by the city or state shall be eliminated.

Section 9. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.25.035 LFPMC, Stormwater Pollution Prevention Manual, as follows:

A. Stormwater Pollution Prevention Manual Adopted. The ~~2009~~2021 King County Stormwater Pollution Prevention Manual, as now existing ~~and as may be amended in the future~~, is hereby adopted by reference.

B. Compliance with this chapter shall be achieved through the use of best management practices described in the Stormwater Pollution Prevention Manual by the owner/operator of pollutant generating sources. In applying the Stormwater Pollution Prevention Manual, the director shall first require the implementation of source control BMPs. If these are not sufficient to prevent contaminants from entering surface and stormwater or groundwater, the director may require implementation of treatment BMPs as set forth in AKART. The Lake Forest Park public works department ~~may~~will provide, upon reasonable request, available technical assistance materials and information, and

information on outside financial assistance options to persons required to comply with this chapter.

C. Where no guidance is provided in the Stormwater Pollution Prevention Manual for a specific source of pollutants, the director may authorize owner/operator to implement or adapt BMPs based on the best professional judgment of the director.

D.G. BMP requirements may be met by pPersons implementing BMPs through another federal, state or local program ~~will not be required to implement the BMPs prescribed in the Stormwater Pollution Prevention Manual, unless if~~ the director determines the alternative BMPs are ineffective at reducing the discharge of contaminants. If the other program requires the development of a stormwater pollution prevention plan or other best management practices plan, the person shall make the plan available to Lake Forest Park upon request. Persons who qualify for exemptions from the Stormwater Pollution Prevention Manual include, but are not limited to, persons:

1. Required to obtain a general or individual NPDES permit from the Washington State Department of Ecology;
2. Implementing BMPs in compliance with the management program of the city's municipal NPDES permit; or
3. Identified by the director as being exempt from this section.

E.D. Wherever the Stormwater Pollution Prevention Manual uses the phrase: "the County," "Department of Development and Environmental Services" (DDES) or "Water and Land Resources Division" (WLRD), it shall be deemed to refer to city of Lake Forest Park public works department or their designee. Wherever the manual uses the phrase "King County," it shall be deemed to refer to Lake Forest Park.

E.F. Failure to implement source control BMPs consistent with the Stormwater Pollution Prevention Manual shall constitute a violation of this chapter and shall be subject to enforcement as provided in this chapter.

Section 10. ADDITION. A new Section 16.25.047 LFPMC is added as follows:

16.25.047. Inspections of Source Control Inventory Sites

The Lake Forest Park public works department, or its designee, shall:

A. Annually, inspect at least 20 percent of the businesses/sites identified on the current source control inventory to assess BMP effectiveness and compliance with source control.

B. Provide information about activities that may generate pollutants and the source control requirements applicable to those activities to all identified sites with a business address, by mail, telephone, electronic communications, or in person, as well as distributing such information during site inspections.

C. Inspect all sites on the source control inventory identified through a credible complaint.

D. Determine whether each site that is inspected adequately implements required BMPs and take enforcement action as established through Section 16.25.050.

Section 11. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.25.050 LFPMP, Enforcement, as follows:

A. The director is authorized to carry out enforcement and/or abatement actions pursuant to applicable provisions of Lake Forest Park Municipal Code, including but not limited to Chapters 1.16, 1.25 and 8.12 LFPMP, LFPMP 16.25.080, and such other provisions as may be adopted by the Lake Forest Park city council.

B. The director shall gain compliance with this chapter by requiring the implementation of BMPs and, when necessary, AKART.

C. The director, in consultation with other departments of the city of Lake Forest Park, shall develop and implement additional enforcement procedures. These procedures shall indicate how the city will investigate and respond to reports or instances of noncompliance with this chapter and shall identify by title the official(s) responsible for implementing the enforcement procedures.

D. The director is authorized to make such inspections, including the inspection of source control inventory sites as required by Section 16.25.047 LFPMP and take such actions as may be required to enforce the provisions of this chapter.

1. The director may observe best management practices or examine or sample surface and stormwater or groundwater as often as may be necessary to determine compliance with this chapter. Whenever an inspection of a property is made, the findings shall be ~~documented~~recorded and a copy of the inspection findings shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation and completion of the inspection findings. The director must document each site visit, inspection report, warning letter, notice of violation or other enforcement record demonstrating an effort to bring a site into compliance, as well as a record of sites that are not inspected because the property owner denies entry.

2. When the director has made a determination that any person is violating this chapter, the director may require the violator to sample and analyze any discharge, surface and stormwater, groundwater, and/or sediment, in accordance

with sampling and analytical procedures or requirements determined by the director. If the violator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the ~~director~~city engineer.

3. If a site has failed to adequately implement BMPs, the director must:

- a. Encourage compliance through follow-up action including phone calls, letters, emails, of follow-up inspections to encourage compliance.
- b. If compliance is still not achieved after appropriate follow-up action, take any enforcement action available under this chapter, which, at a minimum, includes documenting inspections and sending warning letters or notices of violation.

4. The director may refer non-emergency violations to the State of Washington Department of Ecology.

E. In addition to any other penalty or method of enforcement, the City Attorney~~prosecuting attorney~~ may bring actions for injunctive or other relief to enforce this chapter.

Section 12. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 18.48.030 LFPMC, Applicability, as follows:

A. An application for commercial site development permit shall be submitted for commercial development proposed on sites consisting of one or more contiguous lots legally created and zoned to permit the proposed uses.

...

D. If any of the following scenarios apply to a mixed use, multifamily, commercial and/or office proposal, then the applicant must apply for and obtain a CSDP first, prior to issuance of any other permit. In the event of any question, the code administrator or his/her designee shall be responsible for determining the applicability of CSDP requirements.

1. If three residential units or more will be located on an individual parcel. This includes three individual single-family dwelling units, townhouse units, apartment units or a combination of dwelling types. Note: Accessory dwelling units are not counted as a residential unit for purposes of this calculation.
2. Any mixed use, new office, multifamily, commercial or office building. Note: New government and institutional buildings are also included in this definition.

- 3. Any mixed use, office, multifamily, commercial, institutional expansion, tenant improvement or change of use that results in an increase in the number of dwelling units; an increase in impervious surface which triggers a new level of surface water review; a change in the number of ingress or egress points from the site (whether at the applicant's request or expansion in any of the following areas: building square footage, parking space requirements or peak p.m. traffic trips).
- 4. Any mixed use, office, multifamily, commercial, institutional expansion, tenant improvement or change of use that will impact sensitive areas, shorelines or buffers.
- 5. Any mixed use, office, multifamily, commercial or institutional expansion that will require drainage review in accordance with the ~~2016King~~ [County Surface Water](#) Design Manual [as defined in LFPMC 16.08.030](#).

Section 13. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 18.58.090 LFPMC, Drainage, as follows:

Drainage shall be in conformance with the city of Lake Forest Park standards and the ~~2016King~~ [County Surface Water](#) Design Manual [as defined in LFPMC 16.08.030](#).

Section 14. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 15. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 16. EFFECTIVE DATE. This ordinance shall take effect five (5) days after passage and publication.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this ____ day of June, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matthew McLean
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced:
Adopted:
Posted:
Published:
Effective:

CITY OF LAKE FOREST PARK
COUNCIL SPECIAL COMMITTEE OF THE WHOLE MEETING NOTES
June 21, 2022
6:00 PM

Councilmembers present: Tom French, Deputy Mayor; Lorri Bodi; Tracy Furutani, Larry Goldman (via Zoom), Phillippa Kassover, John Lebo (via Zoom), Semra Riddle

Councilmember absent: None

Staff present: Jeff Johnson, Mayor; Phillip Hill, City Administrator; Kim Adams Pratt, City Attorney; Lindsey Vaughn, Finance Director; Jeff Perrigo, Public Works Director; Mike Harden, Police Chief, Matt McLean, City Clerk

Others present: none

CALL TO ORDER

Deputy Mayor French called the April 25, 2022 Committee of the Whole meeting to order at 6:00 p.m.

Discussion of Speed Limit Reductions and Traffic Calming Methods

Deputy Mayor French gave a short presentation regarding Senate Bill 5687 which will allow the Council to address traffic calming controls in the future.

The Council discussed some methods regarding controlling traffic and traffic calming.

Other Business

Cmbr. Riddle gave a brief presentation regarding a plan for replacing the mailboxes in the city for citizens and responded to questions from the Council.

The Council supported the plan and agreed to move forward with the plan as presented.

Deputy Mayor French gave a short presentation regarding creating a Salary Commission that would recommend salaries for the City Council, and responded to questions from Council.

The Council supported exploring the creation of a Salary Commission.

Citizen Comments – There were no comments from the public.

Adjournment

There being no further business, the meeting adjourned at 7:30 p.m.

Tom French, Deputy Mayor

Matt McLean, City Clerk

CITY OF LAKE FOREST PARK
CITY COUNCIL WORK SESSION SPECIAL MEETING MINUTES
June 23, 2022
6:00 p.m.

It is noted this meeting was held in person in the Emergency Operations Center at City Hall and virtually via Zoom.

Councilmembers present: Tom French, Deputy Mayor; Phillippa Kassover, Council Vice-Chair; Lorri Bodi, Tracy Furutani, Larry Goldman (via Zoom), Jon Lebo (via Zoom), and Semra Riddle (via Zoom).

Councilmembers absent: Jeff Johnson, Mayor

Staff present virtually: Phillip Hill, City Administrator; Lindsey Vaughn, Finance Director; Jeff Perrigo, Public Works Director; Matt McLean, City Clerk

Others present: none

CALL TO ORDER

Deputy Mayor French called the June 23, 2022, City Council work session special meeting to order at 6:00 p.m.

ADOPTION OF AGENDA

Cmbr. Bodi moved to approve the agenda as presented. **Cmbr. Furutani seconded. The motion to approve the agenda as presented carried unanimously.**

Budget 101

Finance Director Vaughn gave a presentation on Budget 101, regarding the preparation of the upcoming 2023-2024 biennial budget.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the meeting at 6:50 p.m.

Jeff Johnson, Mayor

Matt McLean, City Clerk

**CITY OF LAKE FOREST PARK
CITY COUNCIL REGULAR MEETING MINUTES
June 23, 2022**

It is noted this meeting was held in person in the City Council Chambers and remotely via Zoom.

Councilmembers present: Tom French, Deputy Mayor; Phillippa Kassover, Lorri Bodi, Tracy Furutani, Larry Goldman (via Zoom), Jon Lebo (via Zoom), and Semra Riddle (via Zoom).

Councilmembers absent: none

Staff present virtually: Jeff Johnson, Mayor; Phillip Hill, City Administrator; Kim Adams Pratt, City Attorney; Mike Harden, Police Chief; Lindsey Vaughn, Finance Director; Jeff Perrigo, Public Works Director; Cory Roche, Environmental and Sustainability Specialist; Pamela McConville, Court Administrator; Matt McLean, City Clerk

Others present: 5 visitors

CALL TO ORDER

Mayor Johnson called the June 9, 2022 City Council regular meeting to order at 7:00 p.m.

FLAG SALUTE

Deputy Mayor French gave the Pledge of Allegiance.

ADOPTION OF AGENDA

Deputy Mayor French moved to approve the agenda as presented. **Cmbr. Kassover seconded. The motion to adopt the agenda as presented carried unanimously.**

PRESENTATION – Climate Action Committee Work Plan

Climate Action Committee Chair Sarah Phillips and Environmental and Sustainability Specialist Roche presented the Climate Action Committee Work Plan and responded to questions.

CITIZEN COMMENTS

The following members of the audience shared comments with the Council:

- Catherin Kernan, resident of Lake Forest Park, informed the Council and the public regarding the Community Reads book “Facing the Mountain” by Daniel James Brown.

CONSENT CALENDAR

Deputy Mayor French moved to approve the consent calendar as presented. **Cmbr. Riddle seconded. The motion to approve the consent calendar as presented carried unanimously.**

1. June 9, 2022 City Council Work Session Meeting Minutes
2. June 9, 2022 City Council Regular Meeting Minutes
3. Approval of City Expenditures for the Period Ending June 23, 2022, covering Claims Fund Check Nos. 83684 through 83728, in the amount of \$362,394.43, and Payroll Fund ACH transactions in the amount of \$351,426.66 are approved; additional ACH transactions Lexis Nexis, \$257.26; US Bank, \$67,753.47; Washington State Department of Revenue, \$165,251.66; Wex Bank-Chevron, \$158.31; total approved Claims Fund transactions, \$947,241.79

ORDINANCE 1241/Authorizing the Mayor to Sign a Non-Exclusive Franchise Agreement with Puget Sound Energy, Inc., to Provide Electric and Natural Gas Service

City Attorney Pratt presented the item and responded to questions and noted the item would be brought forward for further consideration at a future city council meeting.

ORDINANCE 1243/Granting XO Communications, LLC, a Non-Exclusive Telecommunications Master Use Permit

City Attorney Pratt presented the item and responded to questions and noted the item would be brought forward for further consideration at a future city council meeting.

ORDINANCE 1244/Granting MCI metro Access Transmission Services Corporation a Non-Exclusive Telecommunications Master Use Permit

City Attorney Pratt presented the item and responded to questions and noted the item would be brought forward for further consideration at a future city council meeting.

RESOLUTION 1848/Authorizing the Mayor to Sign American Rescue Plan Act (ARPA) Grant Agreement with Two Trading Tires, LLC

City Administrator Hill presented the item and responded to questions.

Cmbr. Kassover moved to approve as presented Resolution 1848/Authorizing the Mayor to Sign American Recue Plan Act (ARPA) Grant Agreement with Two Trading Tigers, LLC. **Cmbr. Bodi seconded. The motion to approve Resolution 1848 carried unanimously.**

RESOLUTION 1849/Authorizing the Mayor to Sign Interagency Agreement with Washington State Administrative Office of the Courts and Lake Forest Park Municipal Court regarding Interpreter Reimbursement

Court Administrator McConville the item responded to questions. Since the agreement ends in June, there is a need to approve this agreement at this meeting.

Cmbr. Kassover moved to suspend the three-touch rule to consider this matter. **Cmbr. Bodi seconded. The motion to approve waiving the three-touch rule carried unanimously.**

Cmbr. Kassover moved to approve as presented Resolution 1849/Authorizing the Mayor to Sign Interagency Agreement with Washington State Administrative Office of the Courts and Lake Forest Park Municipal Court regarding Interpreter Reimbursement. **Cmbr. Riddle seconded. The motion to approve Resolution 1849 carried unanimously.**

Discussion of Municipal Court Security

City Administrator Hill presented the item and responded to questions. There is a draft Memorandum of Understanding with the Police Guild that can be approved at the next regular meeting for the police department to provide court security.

Budget Calendar for 2022-2024

Finance Director Vaughan presented the proposed budget calendar for 2023 - 2024.

Deputy Mayor French moved to approve as discussed, the budget calendar for the 2023-2024 biennial budget. **Cmbr. Furutani seconded. The motion to approve the budget calendar carried unanimously.**

COUNCIL COMMITTEE REPORTS/COUNCIL/MAYOR/CITY ADMINISTRATOR REPORTS

Councilmembers reported on meetings they attended.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:30 p.m.

Jeff Johnson, Mayor

Matthew McLean, City Clerk

City of Lake Forest Park
SORTED TRANSACTION CHECK REGISTER
7/14/2022

VOUCHER CERTIFICATION AND APPROVAL

We, the undersigned members of the Finance Committee of the City of Lake Forest Park, Washington, do hereby certify that the merchandise or services hereinafter specified have been received, and that CLAIM FUND Check Nos. 83730 through 83786 in the amount of \$516,745.07, PAYROLL FUND ACH transactions in the amount of \$155,161.71 and DIRECT DEPOSIT transactions in the amount of \$156,194.20 are approved for payment this 14th day of July, 2022.

Additional approved transactions are:

ACH transaction Elavon in the amount of \$776.62

ACH transaction Invoice Cloud in the amount of \$1,202.85

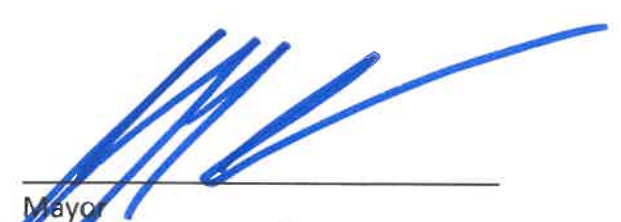
ACH transaction US Bank in the amount of \$28,199.06

ACH transaction Washington State Excise Tax in the amount of \$385.20

Total approved claim fund transactions: \$985,627.36



City Clerk


Mayor
Finance Committee

Accounts Payable

Voucher Approval Document

User: dmeagher
Printed: 07/07/2022 - 12:52PM
Batch: 00014.07.2022



Section 6, Item D.

CLAIM VOUCHER

CITY OF LAKE FOREST PARK
17425 BALLINGER WAY NE
LAKE FOREST PARK, WASHINGTON 98155

CERTIFICATION

I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Lake Forest Park, and that I am authorized to authenticate and certify to said claim.

SIGNED - CITY ADMINISTRATOR OR DESIGNEE

Fund	Description	Amount
001	General Fund	98,349.42
101	Street Fund	8,131.45
107	ARPA Fiscal Recovery Fund	7,491.05
302	Transportation Capital Fund	7,602.75
401	Sewer Utility Fund	205,768.83
403	Surface Water Fund	50,146.70
404	Surface Water Capital Fund	26,256.50
501	Vehicle Equip Replacement Fund	14,445.97
631	Treasurer's Clearing Fund	445.20
632	Police Coalition Fund	3,900.33
Report Total:		422,538.20

Bank Reconciliation

Section 6, ItemD.

Checks by Date

User: dmeagher
Printed: 07/08/2022 - 11:11AM
Cleared and Not Cleared Checks



Check No	Check Date	Name	Comment	Module	Clear Date	Amount
0	7/14/2022	Invoice Cloud		AP		1,202.85
0	7/14/2022	State of Washington		AP		385.20
0	7/14/2022	Elavon		AP		776.62
83738	7/14/2022	AARD Pest Control, Inc		AP		109.00
83739	7/14/2022	City of Algona		AP		743.20
83740	7/14/2022	Association of Washington Cities		AP		13,400.00
83741	7/14/2022	Anthony Carl Basler		AP		130.00
83742	7/14/2022	Brown Bear Car Wash		AP		9.00
83743	7/14/2022	City of Clyde Hill		AP		846.22
83744	7/14/2022	CNA Surety		AP		30.00
83745	7/14/2022	Washington Criminal Justice Training C		AP		1,100.00
83746	7/14/2022	Databar		AP		2,562.99
83747	7/14/2022	Enumclaw Police Department		AP		627.75
83748	7/14/2022	Gordon Thomas Honeywell Gov't. Affa		AP		3,000.00
83749	7/14/2022	Jennifer Johnson Grant		AP		632.48
83750	7/14/2022	Gray & Osborne, Inc.		AP		22,794.00
83751	7/14/2022	Johnston Group, LLC		AP		3,925.00
83752	7/14/2022	King County Dept of Natural Resources		AP		9,662.83
83753	7/14/2022	King County Finance		AP		3,161.20
83754	7/14/2022	King County Pet License		AP		60.00
83755	7/14/2022	King County Finance		AP		1,689.06
83756	7/14/2022	King County Finance & Business		AP		201,957.73
83757	7/14/2022	King County Sheriff's Office		AP		16,803.00
83758	7/14/2022	KDH Consulting, Inc		AP		395.74
83759	7/14/2022	Legend Data Systems, Inc.		AP		50.65
83760	7/14/2022	Lake Forest Bar & Grill		AP		7,491.05
83761	7/14/2022	Litho Craft, Inc.		AP		3,840.02
83762	7/14/2022	Loomis		AP		176.10
83763	7/14/2022	City of Normandy Park		AP		1,683.16
83764	7/14/2022	Northshore Fire Department		AP		60.00
83765	7/14/2022	Northshore Utility District		AP		21,858.72
83766	7/14/2022	Office Depot, Inc.		AP		10.67
83767	7/14/2022	Olympic Environmental Resources, Inc.		AP		2,500.00
83768	7/14/2022	PACE Engineers, Inc.		AP		1,106.00
83769	7/14/2022	Pacific Office Automation		AP		739.18
83770	7/14/2022	Parametrix, Inc		AP		18,970.55
83771	7/14/2022	Pat's Trees & Landscape Inc.		AP		7,942.00
83772	7/14/2022	ProForce Law Enforcement		AP		25,001.17
83773	7/14/2022	Puget Sound Business Journal		AP		160.00
83774	7/14/2022	Rotary Club of Lake Forest Park		AP		70.00
83775	7/14/2022	Stewart MacNichols Harmell, Inc., P.S.		AP		7,500.00
83776	7/14/2022	Snohomish Co Sheriff's Office		AP		21,751.75
83777	7/14/2022	State Auditor's Office		AP		4,582.00
83778	7/14/2022	Stericycle, Inc.		AP		10.36
83779	7/14/2022	Suburban Propane		AP		421.04
83780	7/14/2022	Transpo Group USA Inc		AP		2,391.75

Check No	Check Date	Name	Comment	Module	Clear Date	Section 6, ItemD.
83781	7/14/2022	Tri-Tec Communications, Inc.		AP		214.70
83782	7/14/2022	Wally's Towing, Inc.		AP		425.60
83783	7/14/2022	Washington Association of Sheriffs & P		AP		450.00
83784	7/14/2022	Washington State Department of Ecolog		AP		6,067.00
83785	7/14/2022	Westlake Hardware WA-153		AP		435.86
83786	7/14/2022	Zipline Interactive		AP		625.00
						=====
Total Check Count:						52
						=====
						=====
Total Check Amount:						422,538.20
						=====

Bank Reconciliation

Checks by Date

User: dmeagher
Printed: 07/08/2022 - 12:30PM
Cleared and Not Cleared Checks



Check No	Check Date	Name	Comment	Module	Clear Date	Amount
62229901	6/27/2022	Kennys Auto Detail, Inc		AP		357.77
62203791	7/14/2022	ASCAP		AP		400.54
62205431	7/14/2022	FBI National Academy FBINAA		AP		100.00
62205432	7/14/2022	Target Corp.		AP		44.04
62205433	7/14/2022	FBI National Academy FBINAA		AP		100.00
62205434	7/14/2022	Axon Enterprise, Inc.		AP		442.43
62205435	7/14/2022	Galls, LLC		AP		116.47
62205436	7/14/2022	PRI Management Group		AP		259.00
62205437	7/14/2022	Mystaire, Inc.		AP		1,084.20
62209641	7/14/2022	Forestry Supplier		AP		46.68
62210101	7/14/2022	Adobe Inc.		AP		256.42
62210102	7/14/2022	Wasabi Technologies, Inc		AP		9.07
62218781	7/14/2022	Amazon		AP		11.00
62227511	7/14/2022	Amazon		AP		0.00
62227512	7/14/2022	Microsoft Corporation		AP		397.08
62227514	7/14/2022	Amazon		AP		75.85
62227515	7/14/2022	Adobe Inc.		AP		256.42
62227771	7/14/2022	Cedarbrook		AP		190.26
62227881	7/14/2022	Seattle City Light		AP		12.60
62227882	7/14/2022	Seattle City Light		AP		12.62
62227883	7/14/2022	Seattle City Light		AP		372.22
62227884	7/14/2022	Seattle City Light		AP		2,616.22
62227885	7/14/2022	North City Water District		AP		66.98
62227886	7/14/2022	North City Water District		AP		134.05
62227887	7/14/2022	North City Water District		AP		96.54
62227888	7/14/2022	North City Water District		AP		117.07
62227889	7/14/2022	Puget Sound Energy		AP		11.00
62229902	7/14/2022	FBI National Academy FBINAA		AP		150.00
62229903	7/14/2022	FBI National Academy FBINAA		AP		420.00
62229904	7/14/2022	FBI National Academy FBINAA		AP		199.27
62289531	7/14/2022	Mister T's Trophies		AP		202.58
62289532	7/14/2022	Amazon		AP		0.00
62289533	7/14/2022	Amazon		AP		36.32
62289534	7/14/2022	Best Buy		AP		16.57
62289535	7/14/2022	Albertsons		AP		54.95
62292711	7/14/2022	ESRI		AP		110.10
62295771	7/14/2022	Qunita La		AP		425.18
62295772	7/14/2022	Amazon		AP		116.48
62295773	7/14/2022	Amazon		AP		858.74
62296351	7/14/2022	Mister T's Trophies		AP		280.42
62296352	7/14/2022	Jeannine Pound Photography		AP		2,196.50
62296353	7/14/2022	Belkin International Inc		AP		118.90
622278810	7/14/2022	Summit Law Group PLLC		AP		2,528.00
622278811	7/14/2022	Northwest Cascade, Inc.		AP		418.01
622278812	7/14/2022	Northwest Cascade, Inc.		AP		504.11
622278813	7/14/2022	Johnson Controls		AP		1,196.25

Check No	Check Date	Name	Comment	Module	Clear Date	Section 6, Item D.
622278814	7/14/2022	Pacific Topsoils, Inc.		AP		220.40
622278815	7/14/2022	Integra Telecom, Inc.		AP		405.81
622278816	7/14/2022	Seattle City Light		AP		25.65
622278817	7/14/2022	Sound Security Inc. (Sonitrol)		AP		1,740.37
622278818	7/14/2022	Northwest Cascade, Inc.		AP		174.05
622278819	7/14/2022	Northwest Cascade, Inc.		AP		190.55
622278820	7/14/2022	The Seattle Times		AP		225.23
622278821	7/14/2022	Smarsh		AP		1,617.47
622278822	7/14/2022	Verizon Wireless		AP		5,255.25
622278823	7/14/2022	Good To Go		AP		3.25
622278824	7/14/2022	Northwest Cascade, Inc.		AP		418.01
622278825	7/14/2022	Northwest Cascade, Inc.		AP		504.11
						=====
Total Check Count:						58
						=====
						=====
Total Check Amount:						28,199.06
						=====

Bank Reconciliation

Checks by Date

User: dmeagher
Printed: 07/08/2022 - 1:00PM
Cleared and Not Cleared Checks



Section 6, Item D.

Check No	Check Date	Name	Comment	Module	Clear Date	Amount
83730	6/24/2022	American Traffic Solutions Inc.		AP		66,500.00
83731	6/24/2022	Bio Clean, Inc.		AP		847.78
83732	6/24/2022	Brown Bear Car Wash		AP		36.00
83733	6/24/2022	Carahsoft Technology Corp		AP		28,458.67
83734	6/24/2022	Jason Czebotar		AP		381.42
83735	6/24/2022	Washington State Department of Labor		AP		94.40
83736	6/24/2022	Office Depot, Inc.		AP		33.27
83737	6/24/2022	Progressive Animal Welfare Society		AP		220.00

Total Check Count: 8

Total Check Amount: 96,571.54

Bank Reconciliation

Checks by Date

User: dmeagher
Printed: 07/08/2022 - 12:19PM
Cleared and Not Cleared Checks



Section 6, Item D.

Check No	Check Date	Name	Comment	Module	Clear Date	Amount
0	6/23/2022		DD 00523.06.2022	PR		156,194.20
Total Check Count:						1
Total Check Amount:						156,194.20



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	7/14/2022
Originating Department	Planning & Building Department
Contact Person	Steve Bennett, Planning Director Kim Adams Pratt, City Attorney
Title	Ordinance 1245 amending chapter 16.14 LFPMC, Tree Canopy Preservation and Enhancement

Legislative History

- First Presentation: April 28, 2022, Council regular meeting
- Second Presentation: June 9, 2022, Council work session
- Third Presentation: July 14, 2022, Council regular meeting

Attachments:

1. Ordinance No. 1245 amending chapter 16.14 LFPMC, Tree Canopy Preservation and Enhancement

Executive Summary

Ordinance 1245 proposes to make amendments to chapter 16.14 of the Lake Forest Park Municipal Code (“LFPMC”), Tree Canopy Preservation and Enhancement (the “Tree Code”). The draft Ordinance would amend the “Policy” section of the chapter by adding a statement regarding the importance of trees in mitigating climate change and explaining the particular importance of “Exceptional” trees. Throughout the Ordinance the phrase “stand of trees” is replaced with the phrase “grove of trees” defined as a continuous grouping of trees of a certain size with overlapping canopies that occupy a defined amount of space.

The proposed Ordinance would also amend the process for appealing an approved tree permit by not allowing the tree to be removed until the appeal period for a major tree permit has expired (14 days). For removal of trees in critical areas, the proposed ordinance authorizes the city to require review by the appropriate professional but eliminates the mandatory requirement that a geologist or geotechnical engineer certify all permit applications on steep slopes, landslide hazard areas, or their buffers. The Ordinance also amends the “Tree replacement” section of the Tree Code by adding an emphasis on choosing native replacement tree species. Lastly, the Ordinance changes the assessment of tree canopy coverage from annually to once every five years. The Ordinance does not amend the threshold

diameter of Exceptional trees, leaving the issue for further review after Council’s receipt of the results of additional assessment and analysis.

Background

In March of 2017, the City Council adopted Ordinance No. 1152, repealing and replacing chapter 16.14 LFPMC. After months of city staff and citizens using the Tree Code, the City Council adopted Ordinance 1157 in August of 2017, amending the Tree Code to decrease the number of Exceptional tree species and decrease the threshold diameter of Exceptional trees.

Most recently, in April 2022, the City’s Tree Board recommended to the City Council amendments to the Tree Code. These recommendations include an expanded policy statement, reducing the threshold diameter for certain Exceptional tree species, making the requirement for a geotechnical report discretionary when a tree on a steep slope is proposed for removal, and replacing the phrase “stand of trees” with “grove of trees.” T

Fiscal & Policy Implications

Costs updating the municipal code.

Alternatives

<i>Options</i>	<i>Results</i>
• Approve the Ordinance.	Adopt amendments to the Tree Code.
• Do not approve the Ordinance	Continue review and study of proposed amendments to the Tree Code.

Staff Recommendation

Approve and adopt Ordinance 1245 amending chapter 16.14 of the Lake Forest Park Municipal Code, Tree Canopy Preservation and Enhancement.

ORDINANCE NO. 1245

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AMENDING CHAPTER 16.14 OF THE LAKE FOREST PARK MUNICIPAL CODE, TREE CANOPY PRESERVATION AND ENHANCEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in March of 2017, the City Council adopted Ordinance No. 1152, repealing and replacing chapter 16.14 of the Lake Forest Park Municipal Code (LFPMC), Tree Canopy Preservation and Enhancement (the “Tree Code”); and

WHEREAS, after months of city staff and citizens using the Tree Code, the City Council adopted Ordinance 1157 in August 2017, amending the Tree Code to revise the definition of an Exceptional Tree; and

WHEREAS, the City’s Tree Board has presented to the City Council recommended amendments to the Tree Code; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act, Chapter 43.21C RCW, pursuant to Chapter 197-11 WAC, and a _____ was issued on _____, 2022; and

WHEREAS, in accordance with the requirements set forth in RCW 36.70A.106, the City provided the Washington State Department of Commerce (Commerce) notice of the City’s intent to adopt the proposed amendments on _____, and received notice that Commerce had granted expedited review on _____; and

WHEREAS, the City Council held public meetings to review amendments to Chapter 16.14 LFPMC during a City Council study session and regular meetings on June 9, 2022; July 14, 2022, _____; and

WHEREAS, the City Council held a public hearing on _____, 2022, regarding the proposed amendments; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.010 LFPMC, Policy, as follows:

Trees in Lake Forest Park serve an important role in mitigating climate change and its effects on our community, by simultaneously removing CO2 from the air and minimizing the “urban heat island” effect. Exceptional trees are the foundations that anchor our forest canopy; they sequester the most carbon and contribute the most seed to the next generation of forest trees. Groves of trees, anchored by exceptional trees, buffer most effectively against high winds, soil erosion and fluctuating surface temperature, provide canopy continuity for wildlife migration corridors, and are necessary for the ecological processes that integrate the canopy with the soil and the understory vegetation that make a viable ecosystem. As a “Tree City,” our community does not simply value trees for their aesthetic beauty, but for the ecological processes they provide.

It is the policy of the city to:

- A. Provide more diverse, healthier, and greater, predominantly evergreen tree canopy coverage to future generations of residents while protecting and respecting private property rights.
- B. Maximize the storm and surface water, wildlife, climate change, human health, and other benefits provided by trees and their understory vegetation, including everything from their canopy to their roots.
- C. Mitigate the economic, environmental, and community consequences of tree loss on public and private lands.
- D. Implement canopy-based regulatory and permitting strategies that result in at least no net loss in tree canopy coverage and is grounded in a 30-year maturity cycle for trees.
- E. Allow property owners to make reasonable use of their property while managing the trees, stands of trees and urban forests and their inter-related benefits.
- F. Promote and prefer the retention of viable existing trees and mature tree canopy coverage over removal and replacement through encouraging project designs that utilize existing trees in the landscape, or allow replacement of select native or acceptable substitute tree species (as defined on the city’s general tree list) to maintain the urban forests of Lake Forest Park.
- G. Protect exceptional trees that, because of their unique combination of species, age, size, location, and health, constitute an important community resource.

Section 2. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.020 LFPMC, Purpose and intent, as follows:

16.14.020 Purpose and intent.

The purpose and intent of this chapter is to:

- A. Implement certain strategies for the management and protection of Lake Forest Park’s urban forest resources described in those goals and policies of the Lake Forest Park community forest management plan that were accepted by the city council;
- B. Preserve and enhance the tree canopy of Lake Forest Park by encouraging the protection of existing trees and grovesstands of trees, and the replanting of new trees to replace those lost to old age, storms, development and other maladies;
- C. Mitigate the economic, environmental, and aesthetic consequences of tree loss through protection and tree planting on public and private lands;
- D. Provide guidelines to protect trees from adverse impacts during construction;
- E. Encourage project designs that utilize existing trees in the landscape, or allow replacement of select native tree species to maintain the urban forests of Lake Forest Park;
- F. To protect private property rights and allow property owners to make reasonable use of their property while protecting suitable and appropriate trees for that site; and
- G. Maintain and protect the public health, safety, and general welfare.

Section 3. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.030 LFPMC, Definitions, as follows:

...

“Exceptional tree” means a viable tree, which because of its unique combination of size and species, age, location, and health is worthy of long-term retention, as determined by the city’s qualified arborist. To be considered exceptional, a tree must meet the following criteria:

1. The tree must be included in and have a diameter at breast height (DBH) that is equal to or greater than the threshold diameters listed in Table 1;
2. The tree shall exhibit healthful vigor for its age and species;
3. The tree shall not be considered a significant risk in regard to existing utilities and structures as evaluated per the tree risk assessment defined in LFPMC 16.14.080(A)(1);
4. The tree shall have no visual structural defects that cannot be mitigated by one or more measures outlined in the International Society of Arboriculture Best Management Practices; and

5. If retained under current tree growth conditions, the tree can be expected to remain viable with reasonable and prudent management and care.

Table 1: Exceptional Tree Species and Their Threshold Diameters

Species	Threshold Diameter (DBH)
Bigleaf MAPLE – Acer macrophyllum	42 inches
Douglas FIR – Pseudotsuga menziesii	42 inches
Grand FIR – Abies grandis	33 inches
MADRONA – Arbutus menziesii	12 inches
Western HEMLOCK – Tsuga heterophylla	36 inches
Western Red CEDAR – Thuja plicata	42 inches
Western White PINE – Pinus monticola	36 inches

...

“Grove:” a contiguous grouping of trees with overlapping canopies that are 12” DBH or greater and that occupy no less than 7,000 square feet or more in size.

...

“Topping” means ~~the cutting back of limbs to stubs within the tree’s crown or the cutting back of limbs or branches to lateral branches that are less than one-third of the diameter of the limb or branch that is cut~~ the removal of the primary leader or the whole top of a tree.

“Tree” means a self-supporting woody plant characterized by one main trunk or, for certain species, multiple trunks, typically reaching at least ~~2012 to 15~~ feet in height at maturity that is recognized as a tree in the nursery and arboricultural industries.

...

Section 4. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.040 LFPMC, Tree removal – Application for permits and posting required, as follows:

...

C. Application Requirements.

1. All tree removal permit applications, except utility forest management permits, shall include the completed permit application supplemented by a general site plan showing:

- a. The name, address, email, and phone number of the applicant and owner of the property;
- b. The locations of tree(s) to be removed;
- c. Nearby structures and streets;
- d. Locations of other significant trees surrounding the tree(s) to be removed;
- e. Locations of critical areas or buffers;
- f. A tree replacement plan if required by LFPMC 16.14.090; and
- g. Authorization for the city's qualified arborist to access the site for the purpose of evaluating the viability of replacement trees.

2. Major tree permits and proactive forest management permit applications shall include the following:

- a. A site map (to scale) with a north arrow depicting accurate location of site features including buildings, driveways, environmentally critical areas and buffers, forest stands-groves or open-grown single or clusters of significant trees; the CRZ of the standgrove, cluster, or individual tree, along with any off-site trees that may be impacted by tree removal, excavation, grading, or other development activity proposed; and
- b. A tree inventory and assessment report prepared by a qualified arborist that includes at a minimum: trees to be removed and protected (including CRZ), trees in the vicinity of construction or that could be impacted by the proposed development activity, tree protection fence location, timeline for tree protection activities, list of protection measures and conditions to be taken during all development activities to ensure code compliance during development activities; and
- c. A report including, at a minimum, information on tree species, diameter at

breast height, condition (health), risk level, existing and proposed canopy coverage, and when applicable, design of a land use proposal that prioritizes healthy trees in accord with LFPMC 16.14.070(D)(3).

...

Section 5. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.070 LFPMC, Tree permit approval criteria conditions, as follows:

16.14.070 Tree permit approval criteria and conditions.

The criteria by which minor tree permits, major tree permits, proactive forest management permits, and utility forest management permits are approved, conditioned, or denied.

A. The tree canopy coverage goal for the lot sizes and land use types is set forth in Table 2 below. Tree canopy coverage is measured by the percentage of canopy provided by existing trees or the projected canopy coverage to be provided by newly planted or immature trees (when such trees reach 30 years of age).

Table 2: Canopy Coverage Goal

Zoning and Lot Size	Canopy Coverage Goal
Single-family lots greater than 15,000 square feet	58%
Single-family lots 10,000 – 15,000 square feet	39%
Single-family lots less than 10,000 square feet	28%
Multifamily	15%
Commercial	15%
Southern Gateway Single Family	15%
Southern Gateway Transition	10%
Southern Gateway Corridor	5%

B. A lot’s canopy coverage shall be calculated by the city’s qualified arborist for all permits requiring arborist review.

C. Minor Tree Permits. A minor tree permit shall be granted if conditioned on at least one tree replacing each tree removed, to provide canopy coverage equal to or greater than the tree(s) being removed.

D. Major Tree Permits. A major tree permit shall be granted if the application satisfies or approval is conditioned to satisfy the following:

1. When the proposed tree removal is not associated with major development activity, trees may be removed if a tree replacement plan is approved that, at a minimum, does the lesser of the following:
 - a. Maintains the canopy coverage at or above the applicable canopy coverage goal; or
 - b. Maintains canopy coverage at or above the percentage existing prior to tree removal.
2. When the proposed tree removal is associated with major development activity, the trees may be removed if a tree replacement plan is approved that, at a minimum, brings canopy coverage to the applicable canopy coverage goal.
3. Development proposals associated with a tree permit shall:
 - a. Incorporate trees as a site amenity and to reflect a strong emphasis on tree protection.
 - b. Demonstrate the following prioritized factors for retention:
 - i. Existing viable trees in groups or [stands groves](#);
 - ii. Exceptional trees or other high quality open-grown, windfirm trees;
 - iii. Landmark trees;
 - iv. Trees in critical area buffers, or adjacent to critical area buffers;
 - v. Trees that are interdependent with and therefore critical to the integrity of [stands groves](#) of other protected trees;
 - vi. Other individual trees that will be windfirm, high quality trees if retained;
 - vii. Other trees that provide wildlife or riparian habitat, screening, buffering or other amenities;
 - viii. Trees that help to protect neighbors' trees from windthrow, or other trees within required yard setbacks or on the perimeter; and
 - ix. Trees next to parks or other open space areas.
 - c. Retain a forested look, value, and function after development or modification. Trees should be protected within vegetated islands and [stands groves](#) rather than as individual, isolated trees scattered throughout the site.
 - d. Consider tree protection opportunities in the design and location of building footprints, parking areas, roadways, utility corridors and other structures.
 - e. Provide grading plans that accommodate existing trees and avoid alteration to grades around existing significant trees.
4. Conditions necessary to safeguard trees identified for protection.
5. A notice on title, in the form required by LFPMP 16.16.190, shall be recorded by the applicant disclosing the permit and associated tree retention conditions as

required by this chapter. A notice on title is required for all major permits associated with major development activity, and for major permits which would cause the property's canopy coverage to fall below the canopy coverage goal.

6. Conditions required by the city's qualified arborist to safeguard at-risk trees throughout the development process.

7. Conditions that require sidewalks, structures, utilities, and roadways to be set back at least five feet from the CRZ, except where such structure is cantilevered or otherwise raised above the ground's surface so as not to disrupt the tree's roots, and the proposed construction is not likely to result in conflicts between the tree and the sidewalk, driveway, structure, or utility that would necessitate the tree's removal during its normal lifespan.

8. Conditions to allow trenching, construction, or an alteration of grades between the five-foot setback from the critical root zone (CRZ) and the interior critical root zone (ICRZ) of a protected tree; provided, that the tree protection plan approved by the city's qualified arborist demonstrates that the proposed activity will not adversely affect the long-term viability of the tree.

E. Proactive Forest Management Permits. A proactive forest management permit shall be granted if the application satisfies or can be conditioned to satisfy the following:

1. All recommendations by the city's qualified arborist for maintenance, management, preservation and enhancement of the viability of trees on a lot or lots must be incorporated into the proactive forest management plan prior to approval.
2. The proposed tree removal and replacement plan, at minimum, does the lesser of the following:
 - a. Maintains canopy coverage at or above the applicable canopy coverage goal; or
 - b. Maintains canopy coverage at or above the percentage existing prior to tree removal.
3. If major development activity is proposed while a proactive forest management permit is active, then tree replacement must comply with subsection (D)(2) of this section and bring the parcel(s) up to the canopy coverage goal.
4. Tree removal shall not exceed tree replacement on an annual basis unless otherwise authorized by the city's qualified arborist due to risks to viability of existing or replacement trees during the removal process.
5. Amendments to the approved proactive forest management plan may only be made with approval of both the administrator and the city's qualified arborist.
6. The standard duration of an active proactive forest management permit is five years, unless otherwise authorized by the city's qualified arborist.
7. Conditions necessary to safeguard trees identified for protection.

8. A notice on title, in the form required by LFPMC 16.16.190, shall be recorded by the applicant, disclosing the permit and associated tree retention conditions as required by this chapter.

9. A contract with a qualified arborist to undertake annual site visits at the expense of the applicant and submit annual progress reports to the administrator for each year that the permit is valid.

F. Utility Forest Management Permits. A utility forest management permit shall be granted if the application satisfies or can be conditioned to satisfy the following:

1. Establishes a commitment for collaboration between a utility provider's qualified arborist and the city's qualified arborist that results in a utility forest management plan which includes approaches, strategies, and timelines that are in keeping with the city policies of LFPMC 16.14.010; and
2. Establishes that tree removal shall be granted for safety and service related issues, conditioned on at least one tree replacing each tree removed, either through on-site planting, a voucher program, or other agreement between the city and the utility and that tree replacement is not required when tree removal is associated with emergency action; and
3. Establishes that the city is the recipient for all tree replacement required for tree removal in the right-of-way, either through on-site planting, a voucher program, or other agreement between the city and the utility; and
4. Establishes that tree removal in critical areas and their buffers, when necessary for safety and continuity of service related issues, is exempt from requirements of LFPMC 16.14.080 when confirmed by the city's qualified arborist; and
5. Establishes that tree removal defined as emergency actions according to LFPMC 16.14.050 is exempt from permitting requirements when necessary for safety and continuity of service related issues; and
6. Includes criteria acceptable to the city's qualified arborist for providing inventory of trees removed for emergency actions being regularly submitted to the city and, at minimum, including information describing the species and DBH; and
7. Includes a commitment that all tree removal and pruning shall be performed under the supervision of a qualified arborist using best management practices (BMPs).
8. Amendments to the approved utility forest management plan may only be made with approval of both the administrator and the city's qualified tree professional.
9. The standard duration of an active utility forest management permit is based on each utility provider's unique cycle of maintenance, not to exceed five years, unless otherwise authorized by the city's qualified arborist.

G. Notice of Decision. The approved tree permit must be ~~Tree removal may commence immediately upon posting of an approved tree permit~~ on the subject site in the same manner described in LFPMC 16.14.040(D)(1) ~~and on the same day the permit is issued.~~ For major tree permits, removal may commence 15 days after the issuance of the approved tree permit. For minor tree permits, removal may commence immediately upon posting of the approved tree permit. The tree permit shall remain posted at least one week (seven calendar days) after the approved activity has been completed.

H. Appeals. Appeals of tree permit decisions shall be processed under Chapter 16.26 LFPMC as appeals of ministerial administrative decisions. Appeals must be filed within 14 days following the Notice of Decision pursuant to LFPMC 16.26.055.

I. Minor amendments to an approved tree removal permit may be made with written approval of the administrator and the city's qualified arborist. Major amendments that substantively amend the number of trees to be removed, increase impacts on retained trees, or change conditions imposed within the permit must be noticed pursuant to this section prior to written approval of the major amendment.

J. Tree removal permits expire six months (180 days) after the date the permit is issued, unless the city's qualified arborist has approved a proactive forest management permit, utilities forest management permit or the administrator grants one extension of up to six months when the applicant provides a written request prior to expiration that includes a reasonable justification for the extension, such as a financial hardship, hardship in obtaining replacement trees, or weather-related factors that prevent the applicant from completing the requirements of the permit.

Section 6. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.080 LFPMC, Environmentally critical areas and buffers, as follows:

16.14.080 Environmentally critical areas and buffers.

A. Removal of trees in critical areas and their buffers is prohibited, except that permits may be issued in the following circumstances:

1. When trees have been determined to be any of the following under a tree risk assessment conducted in accordance with the International Society of Arboriculture Best Management Practices: Tree Risk Assessment (2013), done by a qualified arborist that is certified as a tree risk assessor, and where the risk cannot be reduced to low with mitigation such as pruning:
 - a. Moderate risk with significant consequences;
 - b. Moderate risk with severe consequences;
 - c. High risk; or
 - d. Extreme risk.

2. When trees proposed for removal are causing obvious physical damage to structures, utilities, or other infrastructure, such as building foundations, public sidewalks, roadways, or water conveyances, and the city's qualified arborist has determined that mitigation actions, such as root pruning, would not be feasible to minimize further damage.

3. When trees proposed for removal are invasive trees, as verified by the city's qualified arborist.

4. When trees proposed for removal are part of an approved action under Chapter 16.16 LFPMC.

~~B. If trees proposed for removal are located in steep slope or landslide hazard areas or their buffers, a qualified professional such as a geologist or geotechnical engineer, as defined in Chapter 16.16 LFPMC, shall certify that the trees can be safely removed or the proposal can be designed so the landslide hazard risk to the property or adjacent property is eliminated or mitigated.~~

~~CB.~~ The administrator may require review by a [geologist, geotechnical engineer, wetland biologist, stream biologist, or other qualified professional](#), as defined in Chapter 16.16 LFPMC, at the applicant's expense, to determine whether or not the proposed removal is likely to cause damage to the critical area or buffer or reduce its ecological function. Permits may be conditioned based on the recommendations of these qualified professionals.

~~DC.~~ Unless authorized in writing by a qualified arborist, stumps of removed trees shall not be removed from the ground, and all vegetation cut shall remain within the critical area or buffer. Woody debris of removed trees shall be lopped and scattered so as not to smother native vegetation.

Section 7. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.090 LFPMC, Tree replacement, as follows:

16.14.090 Tree replacement.

The following apply to tree replacement required under the chapter:

A. All applicants or their successors in interest are required to maintain replacement trees until they are independently viable. Replacement trees that die prior to meeting the definition of significant tree must be replaced by a tree that meets the criteria of this section and any canopy coverage requirements that the expired tree was intended to provide. Changes to the approved tree replacement plan may only be made with approval of both the administrator and the city's qualified arborist.

~~B. [Special emphasis should be given to choosing native replacement tree species due to their numerous environmental benefits. When replacements are being made for the removal of native trees, the same species will be selected unless the city's qualified arborist City Arborist deems a similar species acceptable. Replacement tree species should be selected from the approved Recommendations for replacements of](#)When~~

non-native landscape trees are removed, replacement tree recommendations are included in the general General tree-Tree list-List for the city of Lake Forest Park ~~which is maintained by the city based on the recommendations from the city's qualified arborist, and should~~ shall be evergreen species, whenever ~~appropriate~~ an evergreen tree is being replaced. In environmentally critical areas or their buffers, replacement trees should be native trees or acceptable substitutes, as defined by the general tree list. Selection of a species not on the list shall require approval by the city's qualified arborist. Invasive trees, as defined by this chapter, shall not be used as replacement trees.

C. All replacement trees shall meet the minimum standards for size and quality according to the current edition of the ANSI Z60.1 standard for nursery stock.

D. Major Tree Permits.

1. For lots on which major development activity is proposed, that are legally nonconforming with respect to the lot coverage and lot area requirements (LFPMC Title 18) and are below the canopy coverage goal prior to tree removal, off-site replanting may be approved for any portion of the required canopy coverage that the city's qualified arborist finds would be infeasible to locate on site. Conditions of the permit shall be recorded in the form of a notice on title as described in LFPMC 16.14.070 for the property on which off-site trees are planted.
2. For tree removals that cause a property's canopy coverage to drop below the canopy coverage goal, and for tree removals associated with major development activity, the city's qualified arborist shall undertake annual site visits at the expense of the applicant and submit annual progress reports to the administrator for five years following tree permit issuance. Changes to the approved replanting plan may only be made with approval of both the administrator and the city's qualified arborist.
3. Tree removal permits associated with preliminary subdivisions or preliminary short subdivisions approval shall condition final approval with placement on the face of the subdivision or short subdivision plat a note stating the minimum tree canopy that must be achieved and maintained on each lot.
4. Tree removal permits associated with preliminary subdivisions or preliminary short subdivisions shall include as a condition the creation of a tree conservation easement. The location of the tree conservation easement shall be selected based upon the prioritization for retaining trees listed in LFPMC 16.14.070(D)(3). If suitable trees are not present, then the tree conservation easement should abut other existing ~~stands~~ groves of off-site trees or environmentally critical areas. If all or portions of the tree conservation easement are not treed, then the conservation easement shall be replanted to achieve full canopy coverage (100 percent) when the newly planted trees reach 30 years of age, excluding borrowed canopy from off-site trees. A tree conservation easement shall meet the following criteria for approval:
 - a. The easement shall equal 15 percent of the gross project area;
 - b. No dimension of the easement may be less than 15 feet;

- c. A 15-foot setback shall be maintained from the edge of the easement and any structures;
- d. A five-foot setback from property lines shall be maintained from all sides of the easement;
- e. The easement shall not overlap with a critical area tract;
- f. If the city's qualified arborist determines that native understory vegetation shall be retained within the tree conservation easement, then the easement area shall be either demarcated with split rail fencing or identified with permanent signs;
- g. Tree conservation easements shall be delineated and dedicated on the face of the final recorded subdivision or short subdivision; and
- h. Any tree removal proposed in a tree conservation easement must meet the criteria for tree removal in critical areas.

Section 8. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.140 LFPMC, Requirement for tree services and others doing land clearing and tree removal, as follows:

16.14.140 Requirements for tree services and others doing land clearing and tree removal.

A. In order to assure compliance with the standards and requirements of this chapter, private foresters, arborists, loggers, and contractors involved in major or minor development activity in the city of Lake Forest Park shall be required to [annually](#) sign and submit to the city, on a form approved by the city, a statement acknowledging the city's tree protection requirements.

B. Private contractors involved in land clearing operations who do not provide the above statement shall be prohibited from performing tree removal and land clearing services in the city of Lake Forest Park, shall be in violation of this chapter and may be prosecuted under this chapter, the city's civil penalties ordinance, or as otherwise provided by law.

Section 9. AMEND. The City Council of the City of Lake Forest Park hereby amends Section 16.14.160 LFPMC, Canopy study, as follows:

16.14.160 Canopy study.

The city shall assess its progress in achieving the goals and policies of LFPMC 16.14.010 by conducting a city-wide tree canopy study at least every five years beginning in 2022. For purposes of this study, canopy coverage shall be calculated both as it is at the time of the study and as it is projected to include replacement trees planted as a result of permitted and enforcement activity. The results of this assessment shall be transmitted to the members of the tree board, the planning commission, and city council, as well as publicly posted on the city website, to assist in the evaluation of regulation effectiveness. Additionally, [on an annual basis every 5 years](#), the city shall assess the acreage of tree canopy coverage added as a result of lots being brought up

to the canopy coverage goal through major development activity replacement requirements, as well as the acreage of canopy coverage above the canopy coverage goal that has been removed and not replaced.

Section 10. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 11. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 12. EFFECTIVE DATE. This ordinance shall take effect five (5) days after passage and publication.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this ____ day of _____, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matthew McLean
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced: _____
Adopted: _____
Posted: _____
Published: _____
Effective: _____



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	7/14/2022
Originating Department	Deputy Mayor Tom French Councilmember Tracy Furutani
Contact Person	Deputy Mayor Tom French Councilmember Tracy Furutani
Title	Ordinance 1246 creating a salary commission to set the salaries and benefits for Lake Forest Park elected officials

Legislative History

- First Presentation: July 14, 2022

Attachments:

1. Ordinance No. 1246 creating a salary commission and amending related sections of the LFPMC

Executive Summary

This Ordinance proposes to establish a salary commission that would set the salary and benefits of the mayor and city council. Beginning in 2022, the salary commission would be appointed by the mayor and confirmed by the city council. The commission’s meetings would be subject to the Open Public Meetings Act, public testimony would be taken, and the commission would have 45 days to decide salaries and benefits and inform the city clerk of same. Any change in salaries and benefits would be effective without further action by the city council.

Background

Currently, the salary and benefits of the mayor and City Council are adopted by the City Council. The mayor’s salary and benefits are currently set at \$3,000 per month plus benefits of a half-time employee, and the City Council’s salary is currently set at \$600 per month. LFPMC sections 2.02.010 and 2.06.020, provide for the mayor and City Council’s compensation, but are currently out of date with the compensation last adopted by the City Council. These sections of the LFPMC should be amended regardless of whether Council chooses to create the salary commission. The proposed ordinance amends these sections of code to authorize the salary commission, rather than the city council, to establish the salaries and benefits for the mayor and city council.

Fiscal & Policy Implications

[Click here to enter text.](#)

Alternatives

Options	Results
Approve the Ordinance.	A salary commission will be created to set the salaries and benefits of the City’s elected officials.
Do not approve the Ordinance	Salaries and benefits of the mayor and city council will continue to be set by ordinance adopted by the city council.

Staff Recommendation

Approve and adopt Ordinance 1246 creating a salary commission and amending related sections of the LFPMC.

ORDINANCE NO. 1246

AN ORDINANCE OF THE CITY OF LAKE FOREST PARK, WASHINGTON, ESTABLISHING A SALARY COMMISSION FOR THE CITY IN A NEW CHAPTER 2.30 OF THE LAKE FOREST PARK MUNICIPAL CODE, AMENDING RELATED SECTIONS 2.02.010, 2.06.020, AND 2.22.030; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in 2001, the Washington State Legislature adopted RCW 35.21.015, allowing cities to establish by ordinance an independent salary commission, with authority to set the salary of the mayor and city council members, in lieu of city council members setting the salaries and benefits; and

WHEREAS, the city council desires to establish a salary commission to set the salaries and benefits of the mayor and city council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. ADOPTION. The City Council of Lake Forest Park hereby adopts chapter 2.30 of the Lake of the Forest Park Municipal Code (“LFPMC”), Salary Commission, as follows:

**Chapter 2.30
SALARY COMMISSION**

2.30.010 Salary commission.

The Lake Forest Park salary commission is hereby created to set the salaries and benefits for the city’s elected officials. The salary commission shall consist of three voting members who shall be appointed by the mayor and confirmed by the city council.

2.30.020 Membership – Term - Qualifications.

A. The term of a salary commission member shall be for one salary review, as provided in Section 2.30.030. The term shall commence upon city council confirmation and shall terminate upon filing of the statement of salaries and benefits with the city clerk, as provided in Section 2.30.030.

B. A member shall serve without compensation.

C. For each salary review, conducted once every four years as provided in Section 2.30.030, the mayor shall appoint and the city council shall confirm a salary

commission.

D. No member of the salary commission shall be appointed to more than two terms.

E. A member of the salary commission shall not be an officer, official or employee of the city or an immediate family member of an officer, official or employee of the city. For purposes of this section, "immediate family member" means the parents, spouse, siblings, children, or dependent relatives of an officer, official, or employee of the city, whether or not living in the household of the officer, official, or employee.

2.30.030 Duties - Process.

A. Every four years, commencing in 2022, the salary commission shall review and determine the salaries and benefits paid by the city to the mayor and city council. The salary commission shall convene and determine the salaries and benefits paid to the mayor and the city council within 45 days of confirmation by the city council. The 45-day review and determination time may be extended upon request of the salary commission and approval by the city council.

B. All meetings of the salary commission shall be conducted pursuant to the current edition of Robert's Rules of Order at the time of the convening of the commission. However, with the concurrence of two commissioners such rules may be waived or modified. The meetings shall be subject to the Open Meetings Act, chapter 42.30 RCW. The meetings shall be held in the same location as city council regular meetings. The salary commission shall provide an opportunity for the public to comment on the salaries and benefits of the mayor and city council prior to taking a final vote on salaries and benefits.

C. After determining the salaries and benefits of the mayor and the city council, the salary commission shall file any change in salaries and benefits with the city clerk on or before the second week in September. A salary increase shall be effective on the next payday for City employees. A salary decrease shall be effective for incumbent elected officials at the commencement of their next subsequent term of office.

D. Any increase or decrease in salary shall become effective without further action of the city council and shall be incorporated into the City budget without further action of the city council.

2.30.040 Vacancies.

In the event of a vacancy on the salary commissioner, the mayor shall appoint, subject to approval of the city council, a person to serve the unexpired portion of the term.

2.30.050 Removal.

The City Council may remove a member of the salary commission from office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office.

Section 2. AMEND. The City Council of Lake Forest Park hereby amends section 2.02.010 LFPMC, Compensation, as follows:

2.02.010 Compensation.

~~As established in chapter 2.30 LFPMC, Commencing January 1, 2004, the mayor shall be paid salary and benefits as set by the salary commission \$2,500 per month plus benefits that would accrue for a half-time nonrepresented city employee.~~

Section 3. AMEND. The City Council of Lake Forest Park hereby amends section 2.06.020 LFPMC, Compensation, as follows:

2.06.020 Compensation.

~~As established in chapter 2.30 LFPMC, Councilmembers shall be paid salary and benefits as set by the salary commission \$500.00 per month; provided, that the increase in compensation for any council position shall not take effect until January 1st of the year following the year in which the council position is filled by a general election.~~

Section 4. AMEND. The City Council of Lake Forest Park hereby amends section 2.22.030 LFPMC, Commissions established, as follows:

2.22.030 Commissions established.

The following commissions are established that meet the requirements of LFPMC 2.22.020(B) and their associated and assigned program area responsibilities as follows:

A. Planning Commission. The planning commission shall develop the city's comprehensive plan and updates for recommendation to the mayor and city council and perform other duties as required by state law.

B. Repealed by Ord. 1134.

C. Repealed by Ord. 1134.

D. Repealed by Ord. 1134.

E. Repealed by Ord. 1134.

F. Civil Service Commission. Police personnel as required by state law. The additional duties of this commission shall be defined in the civil service code of the city.

G. Design Review Board. The design review board shall review and make recommendations as required by Chapter 18.42 LFPMC, Town Center.

H. Salary Commission. The salary commission shall set the salaries and benefits for the city's elected officials.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective Date. Sections 2 and 3 of this Ordinance shall become effective upon the salary commission initially establishing salaries and benefits pursuant to section 2.30.030(C) LFPMC. The remainder of this Ordinance shall take effect five (5) days after passage and publication.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this _____ day of _____, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matthew McLean
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced: _____
Adopted: _____
Posted: _____
Published: _____
Effective: _____



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	July 14, 2022
Originating Department	Public Works
Contact Person	Jeff Perrigo, Public Works Director Kim Adams Pratt, City Attorney
Title	Ordinance 1242 Authorizing the Mayor to Sign a non-exclusive Franchise Agreement with Puget Sound Energy, Inc. for providing electric and natural gas service.

Legislative History

- First PresentationJune 23, 2022 Regular Meeting
- Second PresentationJuly 14, 2022 Regular Meeting

Attachments:

- Ordinance 1242
- Exhibit A to Ordinance – Franchise Agreement
- Map of PSE Electric Service Area
- Map of Seattle City Light Service Area

Executive Summary

This is the City Council’s second touch considering a proposed franchise with Puget Sound Energy (PSE) for electric and natural gas service to Lake Forest Park. The proposed Franchise includes a fifteen-year term with the possibility of two extensions of five years each. The Franchise grants PSE the right to use public roads within the City to construct and operate its natural gas and electric transmission facilities. The terms of the Franchise include obtaining right-of-way permits from the City prior to performing work, a process for removing decommissioned poles, a process for decommissioned natural gas lines to be “located” for individuals installing or repairing underground utilities, relocation of PSE facilities when the City undertakes improvement projects; and requires a performance bond from PSE.

Background

RCW 35A.11.020 grants the City broad authority to regulate its right-of-way by. The City is authorized by RCW 35A.47.040 to grant nonexclusive franchises for use of the right-of-way for facilities to transmit natural gas and electricity for public service. The City is prohibited by RCW 35.21.860 from charging a franchise fee for use of the right-of-way for this type of franchise, except for administrative expenses and other fees such as right-of-way permit fees. The City is also authorized by chapter 35.21 RCW and chapter 3.18 of the LFPMC to impose a utility tax on electric energy and natural gas.

The City’s previous franchise for natural gas was with PSE’s predecessor Washington Natural Gas Company, which ran from 1988 to 2013. PSE provides electric transmission services to the area in the City shown on the PSE service area map attached. Seattle City Light provides electricity to the remaining customers in the City as shown on the Seattle City Light service area map attached. Its most recent franchise with the City was entered into in 2015 and expires in 2030.

Fiscal & Policy Implications

Alternatives

Options	Results
Authorize the dual franchise with PSE	Mayor will execute the franchise with PSE and both parties will work under its terms for the next 15 years with an option for two extensions of five years each.
Decline to authorize the dual franchise with PSE	Decline to authorize the dual franchise with PSE

Staff Recommendation

The Administration recommends approval of Ordinance 1242 authorizing the Mayor to sign the Franchise Agreement with Puget Sound Energy for providing electric and natural gas transmission services.

ORDINANCE NO. 1242

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC. A WASHINGTON CORPORATION ITS SUCCESSORS AND ASSIGNS A NON-EXCLUSIVE, FIFTEEN YEAR FRANCHISE PROVIDING ELECTRIC AND NATURAL GAS SERVICE WITHIN THE CITY LIMITS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.11.020 grants the City of Lake Forest Park ("City") broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for . . . poles, conduits, tunnels and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, . . . for gas, . . . and other facilities for public service;" and

WHEREAS, Puget Sound Energy, Inc. ("PSE") currently provides electric and natural gas services for residences and businesses in the City; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of the residents of the City to grant a non-exclusive franchise to PSE for the operation of electrical energy and gas distribution systems within the City's boundaries; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANTING OF FRANCHISE. The City Council authorizes the Mayor to execute a non-exclusive Franchise Agreement with Puget Sound Energy, Inc. to provide electrical energy and natural gas services for a period of fifteen (15) years with the City on the terms and conditions set forth in the Franchise Agreement attached hereto as Exhibit A.

Section 2. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. EFFECTIVE DATE. This ordinance shall take effect after publication and upon acceptance by PSE as provided in Section 17 of Exhibit A.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this [click here](#) to enter day of month. day of [Click here to enter month.](#), 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matthew McLean
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced:

Adopted:

Posted:

Published:

Effective:

**FRANCHISE AGREEMENT BETWEEN
THE CITY OF LAKE FOREST PARK AND PUGET SOUND ENERGY, INC.**

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "City" means the City of Lake Forest Park, optional code city of the State of Washington, and its successors and assigns.

1.1.2 "Communication Systems" means equipment, devices, and other items used for communication purposes in connection with PSE's construction, use, operation, maintenance, repair or replacement of its Facilities in the Franchise Area and other permitted activities under this Franchise, including, without limitation, the operation and management of its natural gas and electric energy distribution systems. Communications Systems specifically excludes any equipment, devices, or systems installed or constructed to provide consumer telecommunications, cable television, or broadband data services at wholesale or retail within the City, whether by wire or wireless means, to persons other than PSE agents, employees, affiliates, contractors, or consultants.

1.1.3 "Decommissioned Pole" means a PSE owned utility pole located in the Franchise Area which is no longer needed to provide Regulated Service.

1.1.4 "Director" means the Public Works Director or their designee.

1.1.5 "Dispute" means any and all claims, controversies or disputes arising between the Parties relating to or in connection with this Franchise.

1.1.6 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, and highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended by annexation or otherwise.

1.1.7 "Facilities" means, collectively, any and all (i) natural gas distribution systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and Communication Systems; (ii) electric transmission and distribution systems, including poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and Communication Systems as defined in Section 1.1.2; and (iii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground. The decommissioning by PSE of any Facilities as defined herein shall not act to remove the same from this definition.

1.1.8 "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party's ability to perform its obligations hereunder and to mitigate the consequences of the event. Force Majeure shall include the following, to the extent also satisfying the criteria specified above: (a) acts of nature, including storms; (b) acts of public enemies, terrorism, war, insurrection or sabotage; (c) any form of compulsory government action or change in Law; (d) accidents or other casualties causing damage, loss or delay; (e) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; and (f) delay in obtaining or denial of any regulatory consents or approvals.

1.1.9 "Hazardous Substances" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.1.10 "Environmental Laws" means and includes any Law relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Model Toxics Control Act, RCW ch. 70.105D.

1.1.11 "Law" means any and all applicable federal, state or municipal law, code, statute, ordinance, rule, regulation or other requirement that is accorded the full force and effect of law and is binding upon the Parties to this Franchise, as such Law exists, is amended, or may be created during the Term. In the event of any conflict or inconsistency between any municipal law, code, statute, ordinance, rule, regulation or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control.

1.1.12 "Ordinance" means Ordinance No. [REDACTED], which sets forth the terms and conditions of this Franchise.

1.1.13 "Party" means and is a reference to either PSE or the City, and "Parties" means and is a collective reference to PSE and the City.

1.1.14 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.15 "Public Improvement Project" means a capital improvement within the Franchise Area undertaken by or on behalf of the City that requires the relocation of Facilities within the Franchise Area, and such capital improvement is funded by the City or with other public monies obtained by the City for such capital improvement.

1.1.16 “Regulated Service” mean any utility, telecommunications or similar service that is subject to the jurisdiction of one or more federal or state agencies that regulate the terms and conditions of such service (including the Federal Energy Regulatory Commission, the Federal Communications Commission, and the WUTC).

1.17 “Tariff” means the term defined in WAC 480-80-030, as amended, or such similar definition promulgated by the WUTC, describing rate schedules, rules and regulations relating to charges and services as may be currently in effect or hereinafter adopted by the WUTC.

1.1.18 “Term” means the term of this Franchise, as set forth in Section 16 “Franchise Term.”

1.1.19 “Tree” means a self-supporting woody plant characterized by one main trunk or, for certain species, multiple trunks, typically reaching at least 12 to 15 feet in height at maturity that is recognized as a tree in the nursery and arboricultural industries.

1.1.20 “WUTC” means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and condition of the services provided by PSE to its customers.

Section 2. Grant of Rights.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and energy for power, heat, light and such other purposes for which gas and energy may be used.

2.2 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE’s rights under this Franchise. This Franchise shall not limit or constrain the exercise of the City’s police powers, nor shall this Franchise prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof, if so exercised and used in a manner that is consistent with the terms and conditions of this Franchise.

2.3 This Franchise shall not convey any right to PSE to install its Facilities on, under, over or across, or to otherwise use, any City-owned or leased properties of any kind that are located outside the Franchise Area. Further, this Franchise shall not govern or apply to Facilities located on PSE-owned or leased properties or easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

2.4 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the

Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to Law.

Section 3. Utility Tax and Franchise Fee

3.1 Utility Tax. PSE acknowledges that the City is authorized under chapter 35.21 RCW, as amended, to impose a utility tax on PSE. Nothing in this franchise shall exempt nor be construed to exempt PSE from payment of this utility tax in accordance with the Lake Forest Park Municipal Code (“LFPMC”).

3.2 Franchise Fee. The City acknowledges that it is precluded from imposing a franchise fee upon PSE pursuant to RCW 35.21.860, for use of the right-of-way except for administrative expenses, fees, taxes or charges authorized by chapter 35.21 RCW.

Section 4. PSE Use and Occupancy of Franchise Area.

4.1 PSE shall exercise its rights within the Franchise Area in accordance with Law. All work performed on PSE's Facilities within the Franchise Area shall be accomplished in a good and workmanlike manner, by means that minimize interference with the free passage of pedestrian or vehicle traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE shall post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required by Law. If work on PSE's Facilities within the Franchise Area shall impair the lateral support of the Franchise Area or adjacent properties, then PSE shall take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

4.2 Prior to PSE engaging in any work on PSE's Facilities located within the Franchise Area, PSE shall apply for all necessary City permits to do such work, and shall, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits. In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, provided that PSE shall notify the Director telephonically or in person within twenty four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. For the purposes hereof, “as soon as reasonably practicable” means that the permit application shall be submitted to the City not later than ten (10) business days after the date of the commencement of the action that requires such permit, unless (i) otherwise agreed to by the Parties or (ii) delayed by a Force Majeure event consistent with Section 14.

4.3 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's Facilities within the Franchise Area, promptly restore the effected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City

shall not impose any fee, fine, charge or other cost or expense on PSE for such damage or disturbance, provided that such restoration work is completed to the reasonable satisfaction of the City. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored consistent with Law.

4.4 If it is reasonably determined that PSE has failed to restore the Franchise Area in accordance with Section 4.3, the City shall provide PSE with written notice including a description of actions the City believes are reasonably necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, or within a timeframe mutually agreed upon by the Parties, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this Section.

4.5 PSE shall have the right to cut, clear and remove vegetation overhanging or growing into PSE's Facilities within the Franchise Area so as to prevent such vegetation from coming in contact with such Facilities. The exercise of such right shall be subject to the City's prior permit approval, which shall not be unreasonably withheld, conditioned or delayed. PSE shall not apply any pesticide within the Franchise Area without the prior permit approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Approvals for vegetation management may be requested by PSE and secured from the City by submitting to the City with an area-wide vegetation management plan. If such plan is approved by the City, no further reviews or approvals shall be required for vegetation management activities that are (a) included in the approved vegetation management plan and (b) consistent with the terms and conditions of the City's approval.

4.6 In exercising its rights pursuant to Section 4.5 and to the extent required for any of its activities pursuant to Section 4.5, PSE shall submit a utility forest management permit application to the City pursuant to chapter 16.14. LFPMC, which will provide for necessary tree maintenance and management. All pruning and removal of trees shall be done in accord with an approved utility forest management permit and chapter 16.14. LFPMC, to the extent applicable.

4.7 Except in an emergency situation, PSE shall inform residents in the immediately affected area at least ten (10) days prior to beginning work under this Section 4 that a scheduled project will commence, the dates and nature of the project, and provide a method by which residents may obtain further information. A door hanger or mailer may be used to satisfy this requirement.

4.8 PSE shall remove debris from all scheduled work performed under this Section 4 within one (1) business day of the work being performed, unless such debris removal is interrupted by an emergency situation, in which case PSE will remove such debris within one (1) business day after the end of the emergency situation. If the debris is not so removed, the City may remove the debris and PSE shall be responsible for all costs and expenses incurred by the City for said removal. The remedy granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

Section 5. Planning and Coordination.

5.1 The Parties shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious

performance and completion of such work as a whole. In so doing, the Parties shall undertake cooperative planning so as to promote the coordinated timing, location and prosecution of such work within the Franchise Area. Upon the request of either Party, but not more often than annually unless otherwise agreed upon by the Parties, the Parties shall meet to discuss and coordinate future construction activities then being planned by either Party within the Franchise Area. Such discussions and coordination shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area.

5.2 Pursuant to the Growth Management Act (GMA), chapter 36.70A RCW, the City is required to prepare and periodically update its Comprehensive Plan. RCW 36.70A.070 lists the mandatory elements that must be contained in the comprehensive plan, including a utilities element. Upon the reasonable request of the City, PSE agrees to participate in a cooperative effort with the City in updates to its utilities element to meet the GMA's requirements, to the extent such information can be provided consistent with Law.

5.3 The Parties agree to cooperate in the planning and implementation of emergency operations response procedures. PSE will engage in the City emergency planning process at the reasonable request of the City; such participation shall be for informational purposes only and shall not obligate either party.

5.4 Upon written request from the City, PSE shall provide the City with the most recent update available of any plan of potential improvements to PSE's Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

5.5 PSE shall provide to the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchisee Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

5.6 PSE reserves the right to withhold information or require the City to sign a nondisclosure agreement for the release of information that is deemed Critical Electric//Energy Infrastructure Information (CEII) by the Federal Energy Regulatory Commission (FERC). CEII means information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health, or safety, or any combination thereto. Any such withholding or nondisclosure agreement must be consistent with FERC regulations 18 CFR 388.113 (g) (5) and the Washington State Public Records Act, RCW 42.56.

5.7 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the Party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation. With respect to any excavations by PSE or the City within the Franchise Area, nothing in this Franchise

is intended (nor shall be construed) to relieve either Party of their respective obligations arising under Law with respect to determining the location of utility facilities.

Section 6. City Use of PSE Facilities in Franchise Area.

6.1 During the Term the City shall have the right, subject to PSE's prior consent (which shall not be unreasonably withheld, conditioned or delayed), to install and maintain City-owned overhead facilities on PSE's overhead electric Facilities within the Franchise Area for non-commercial municipal communications purposes. The City shall install, operate and maintain such facilities at its sole risk and expense and shall conduct all such activities in accordance with Law and consistent with such reasonable terms and conditions as PSE may specify from time to time (including requirements accommodating Facilities or the facilities of other parties having the right to use PSE's Facilities). PSE shall have no obligation under Section 11 "Indemnification and Insurance" in connection with any City-owned facilities that are installed or maintained on PSE's overhead electric Facilities. PSE shall not charge the City for use of PSE's overhead electric Facilities pursuant to this Section 6, provided however, that nothing herein shall require PSE to bear any cost or expense in connection with any such use by the City.

6.2 Notwithstanding the foregoing, if at any time during the Term the City's use of PSE's overhead electric Facilities pursuant to this Section 6 shall be determined to be a matter that is subject to the jurisdiction of the WUTC, then such use shall be arranged and accomplished in accordance with PSE's tariffs on file with the WUTC. During the Term, and with respect to poles within the Franchise Area that are owned by PSE (in whole or in part), the City may, subject to PSE's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned wires, devices and other equipment on such PSE-owned poles pursuant to mutual agreement entered into between the City and PSE. Such mutual agreement may address commercial and non-commercial uses of PSE's poles by the City.

Section 7. Decommissioned Facilities

7.1 Decommissioned Poles.

7.1.1 As of the date of this Franchise, PSE and third parties having attachments of wires, devices and other equipment to PSE owned utility poles located in the Franchise Area use the National Joint Utilities Notification System ("NJUNS") as the means of providing official notice between them of actions required to be taken and reporting of actions taken by such third parties with respect to such attachments. To the extent consistent with Law and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS in place from time to time) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any PSE owned utility poles located in the Franchise Area that are permanently no longer in use by PSE and which contain third party attachments. The City may monitor activity associated with such third-party attachments through NJUNS.

7.1.2 If PSE shall determine a PSE owned utility pole located within the Franchise Area to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall establish the date by which such Decommissioned Pole shall be removed from the Franchise Area. PSE shall

use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within one hundred-eighty (180) days of the date of such notice. If, however, upon receipt of any such notice from PSE the City shall reasonably determine that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian or vehicle traffic, then the City shall so notify PSE and PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) of the date of such notice from the City.

7.1.3 If the City reasonably determines that a PSE-owned utility pole located within the Franchise Area is no longer in use by PSE or by any authorized third-party, then the City may request that PSE determine if such utility pole is a Decommissioned Pole. Upon receipt of such request, PSE shall review the status of the utility pole in question. If PSE shall determine such utility pole to be a Decommissioned Pole, then PSE shall give the City notice thereof in accordance with Section 7.1.1. If PSE shall determine such utility pole not to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall explain the basis for making such determination. The Parties agree to cooperate and establish mutually agreeable procedures for the implementation of this Section 7.1.3 that achieve the Franchise Area management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

7.2 PSE shall notify the City if PSE elects to permanently decommission any of its above-ground natural gas Facilities within the Franchise Area. Upon receipt of said notice, the City will have the right to require PSE to remove such decommissioned above-ground natural gas Facilities from the Franchise Area. If so required, PSE shall remove such decommissioned Facilities from the Franchise Area within 180 days of PSE's permanent decommissioning, or in accordance with a written removal plan authorized by the City. All necessary permits must be obtained prior to such work.

7.3 PSE may, from time to time, elect to discontinue its use of underground natural gas Facilities within the Franchise Area and decommission such Facilities in place ("Decommissioned Gas Facilities"). In such event, PSE shall notify the City of its decision to decommission such Facilities and provide the City with a plan for such decommissioning. Thereafter, the parties shall review the proposed plan and jointly determine any additional requirements that are reasonably necessary to cause the Decommissioned Gas Facilities to be left in a safe condition and in compliance Law. Decommissioned Gas Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 9 and the indemnification provisions in Section 13). As requested by the City in accordance with Section 5.5, PSE shall provide the City with drawings that show the approximate location of Decommissioned Gas Facilities. PSE shall provide the approximate location of Decommissioned Gas Facilities within the Franchise Area, identified in PSE's available records, to individuals and entities locating underground utilities at the same time PSE is locating the active Facilities.

Section 8. Hazardous Substances.

PSE shall comply with Environmental Laws in connection with its use and occupancy of the Franchise Area. PSE shall only use Hazardous Substances within the Franchise Area incident to PSE's normal business operations, and in all cases, (a) limited to such quantities as may be required in its normal business operations, (b) used, transported or stored per manufacturer's instructions, and (c) used, transported or stored only for its intended use. In the event PSE or its contractors

cause a release of Hazardous Substances within the Franchise Area, PSE shall notify the City within twenty-four (24) hours of its discovery. PSE shall act promptly to remediate such release of Hazardous Substances in accordance with Environmental Laws (the "Remediation Work"). All Remediation Work shall be performed at PSE's sole cost and expense.

Section 9. Relocation of Facilities.

9.1 Whenever the City causes a Public Improvement Project to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 9.2 below), the City shall:

9.1.1 as soon as possible prior to the notice to proceed for the Public Improvement Project, but not less than one-hundred twenty (120) days prior to such notice to proceed, provide PSE, written notice requesting such relocation; and

9.1.2 provide PSE with reasonable plans and specifications sufficient for initial PSE system design for such Public Improvement Project.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City and in accordance with a schedule mutually agreed upon by the City and PSE. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 9.1, the City shall bear the entire cost of such subsequent relocation. The term "Public Improvement Project" includes any such capital improvement undertaken by the City pursuant to a valid interlocal agreement between the City and a third-party governmental entity, provided, however, any relocation of PSE's Facilities necessary to accommodate the work funded or performed by or on behalf of such third-party governmental entity shall be arranged and accomplished in accordance with Section 9.2 of this Franchise.

9.2 Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

9.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Section 8.2 above (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

9.4 Nothing in this Section 8 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or

other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

9.5 If any person or entity obtains permission from the City to use the Franchise Area for the movement or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with PSE for the temporary adjustment of PSE's overhead wires necessary to accommodate the movement or removal of such building or other object, where the movement or removal of such building or other object will pass under PSE's overhead wires or where the movement or removal of such building or other object will otherwise require the temporary adjustment of PSE's overhead wires. The City shall require such person or entity to complete such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) calendar days prior to the movement or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the movement or removal of such building or object.

Section 10. Undergrounding of Electric Facilities.

PSE provides electric service on a non-preferential basis subject to and in accordance with tariffs on file with the WUTC. Subject to the availability of such service in accordance with such tariffs, if during the Term the City shall direct PSE to underground overhead electric Facilities within the Franchise Area, then such undergrounding shall be arranged and accomplished subject to and in accordance with such tariffs. This Section 10 shall govern all matters related to the undergrounding of PSE's overhead electric Facilities within the Franchise Area.

Section 11. Indemnification and Insurance.

11.1 PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

11.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of PSE's indemnification obligations.

11.3 During the Term PSE shall maintain the following liability insurance coverages, insuring both PSE and the City against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE in this Franchise:

11.3.1 Commercial General Liability insurance with limits not less than five million dollars (\$5,000,000) per occurrence for bodily injury or death, property damage, and public liability.

11.3.2 Automobile liability for owned, non-owned and hired vehicles with a Combined Single Limit of two million dollars (\$2,000,000) for each accident.

11.3.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

11.4 In lieu of the insurance requirements in Section 11.3, PSE may self-insure against such risks in such amounts as are consistent with this Franchise and good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance program.

Section 12. Performance Bond.

12.1 During the Term PSE shall maintain a performance bond consistent with the applicable requirements of the Lake Forest Park Municipal Code and as reasonably sufficient to ensure performance of PSE's obligations under this Franchise to perform work within the Franchise Area. Such bond shall be in the sum of no more than \$250,000 and shall be executed by a corporate surety authorized to do business in the State of Washington with an A.M. Best's rating of not less than A (Excellent). The bond shall be conditioned so that PSE shall restore or replace any defective work performed by or on behalf of PSE or materials discovered in the restoration of the Franchise Area within a period of two years from the final City inspection date of any such restoration. PSE may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

12.2 In the event PSE fails to restore the Franchise Area in accordance with the terms and conditions of this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 12.1 to cure such deficiency. In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 12.1, the City shall promptly provide written notice of same to PSE. Within thirty (30) Days of receipt of such notice, PSE shall replenish or replace such bond(s).

Section 13. Reservation of Easement in Event of Vacation.

In the event the City vacates any portion of the Franchise Area during the Term the City shall, through its vacation procedure, reserve an easement for PSE's Facilities that exist at the time of the street vacation. The City shall give PSE advance notice of its intent to vacate any portion of the Franchise Area and shall consult with PSE regarding the terms and conditions of the easement to be reserved for PSE's Facilities.

Section 14. Force Majeure.

If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute a Force Majeure event.

Section 15 Dispute Resolution

15.1 In the event of a Dispute, the Dispute shall first be referred to representatives designated by City and PSE to have oversight over the administration of this Franchise. These representatives shall meet within thirty (30) calendar days of either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to attempt to achieve a resolution of the Dispute.

15.2 If the Parties cannot resolve a Dispute satisfactorily pursuant to Section 15.1, either Party may thereafter deliver to the other Party a written notice (the "Dispute Notice") initiating the dispute resolution procedures set forth in this Section 15.2. The Dispute Notice shall (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators of the notifying Party who are authorized to settle the Dispute, and (iii) propose a date or dates within (30) days after the date of the Dispute Notice, on which such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following its receipt of the Dispute Notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators duly authorized to settle the Dispute. Commencing on the date of delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer in good-faith negotiations, as often as they deem reasonably necessary, for a period of thirty (30) days, to resolve the Dispute to the satisfaction of both Parties. If at any time after the expiration of such thirty (30) day period the City shall determine that continued negotiations with PSE will not result in a resolution of the issue or issues in Dispute, and if the City reasonably believes that PSE is then in default of its obligations under this Franchise, then the City may serve upon PSE a written order to comply with the provisions of this Franchise pursuant to Section 16 "Default."

Section 16. Default.

If the Parties cannot resolve a dispute satisfactorily under Section 15, the City may serve upon PSE a written order to comply with the provisions of this Franchise within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control),

then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

Section 17. Franchise Term.

This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance in the form attached to this Franchise. The City Clerk is hereby authorized and directed to forward a certified copy of this Ordinance to PSE to unconditionally accept in writing the terms of this Franchise and file such acceptance with the City Clerk. If requested in writing by PSE and upon agreement of the Parties, the term of this Franchise may be extended for up to two five (5) year periods.

Section 18. Assignment.

PSE shall not assign this Franchise to any unaffiliated third party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 19. Notice of Tariff Changes.

PSE shall when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing, that the application has been submitted to the WUTC within five (5) days of filing with the WUTC. PSE shall also notify the City in writing of any approved Tariff by the WUTC, or its successor, affecting the provisions of this Franchise. In the event of any conflict or inconsistency between the provisions of this Franchise and such Tariff, the provisions of such Tariff shall control.

Section 20. Miscellaneous.

20.1 Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email or certified mail and shall be sent to the respective parties as follows:

To PSE:
Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009-9734
Attn: Municipal Liaison Manager

justin.mcconachie@pse.com

To City:

City of Lake Forest Park
Attn: Jeff Perrigo Public Works Director
17425 Ballinger Way NE
Lake Forest Park, WA 98155

jperrigo@ci.lake-forest-park.wa.us

Any such communication by a Party shall be deemed to have been received by the other Party (i) upon the delivery date received by the intended recipient if delivered by hand; (ii) five (5) business days after it is sent by certified mail, postage prepaid; or (iii) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form. A Party may change its address for purposes of this Section 20.1 by giving written notice of such change to the other Party in the manner provided in this Section 20.1.

20.2 The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Franchise with initial capitals in another number, tense or form. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole. “Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

20.3 Any provisions of this Franchise prohibited or rendered unenforceable by any law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Franchise. In such event, the remainder of this Franchise will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

20.4 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. This Franchise constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

20.5 As provided by RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise. PSE agrees to pay the City’s invoices for the actual administrative expenses within sixty (60) days of receipt of same.

20.6 Nothing in this Franchise shall be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

20.7 The Parties shall act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise. The failure of either Party to insist on or enforce strict performance of any provision of this Franchise or to exercise any right or remedy under this Franchise or Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

20.8 This Franchise shall be governed by, subject to and construed under the laws of the State of Washington. This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

20.9 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the parties as set forth herein shall survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein. The parties also expressly agree that the provisions, conditions and requirements of Section 7. Decommissioned Facilities; Sections 4.1, 4.3 and 4.4 regarding restoration; and Section 11. Indemnification and Insurance shall survive the termination or expiration of this Franchise.

Section 21. Effective Date.

This Ordinance shall be effective on the Effective Date, having been: (i) introduced to the City Council not less than five days before its passage, after having been first submitted to the City Attorney; (ii) published at least five days prior to the Effective Date and as otherwise required by law; and (iii) passed at a regular meeting of the City Council by a vote of at least four members of the City Council on , 2022; and accepted in writing by PSE. This Franchise shall take effect as of the date of PSE's written acceptance thereof (the "Effective Date").

HONORABLE MAYOR AND CITY COUNCIL
CITY OF LAKE FOREST PARK, WASHINGTON

In the matter of the application)
of Puget Sound Energy, Inc., a) Franchise Ordinance No.
Washington corporation, for a)
franchise to construct, operate)
and maintain facilities in, upon,)
over under, along, across and)
through the franchise area of the)

City of Lake Forest Park,)

Washington)

ACCEPTANCE

WHEREAS, the City Council of the City of Lake Forest Park, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. , bearing the date of _____, 2022; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on _____, 2022, from said City of Lake Forest Park, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Lake Forest Park, King County, Washington.

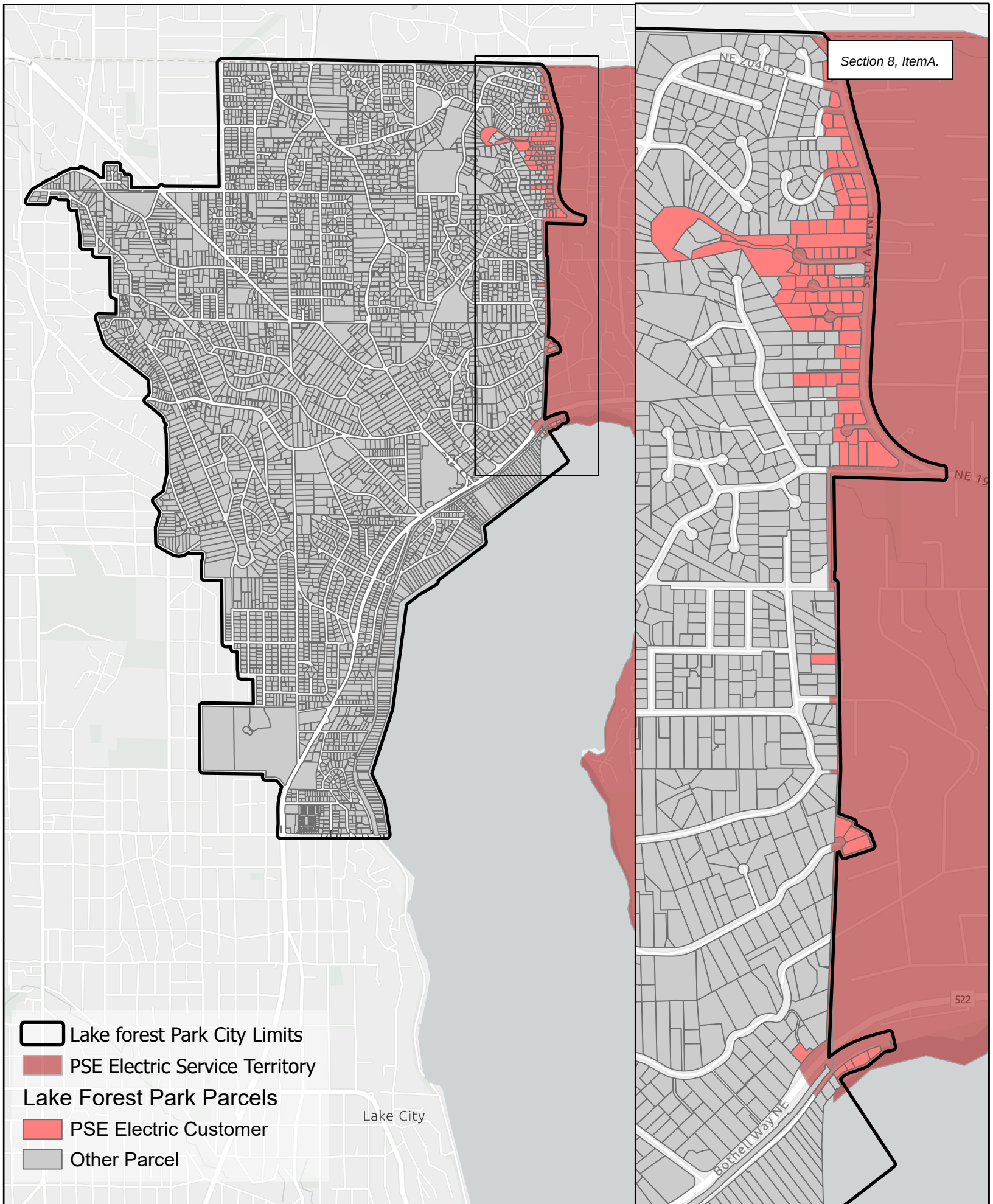
IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this ____ day of _____, 2022.

ATTEST: PUGET SOUND ENERGY, INC.

By: _____
Its: _____

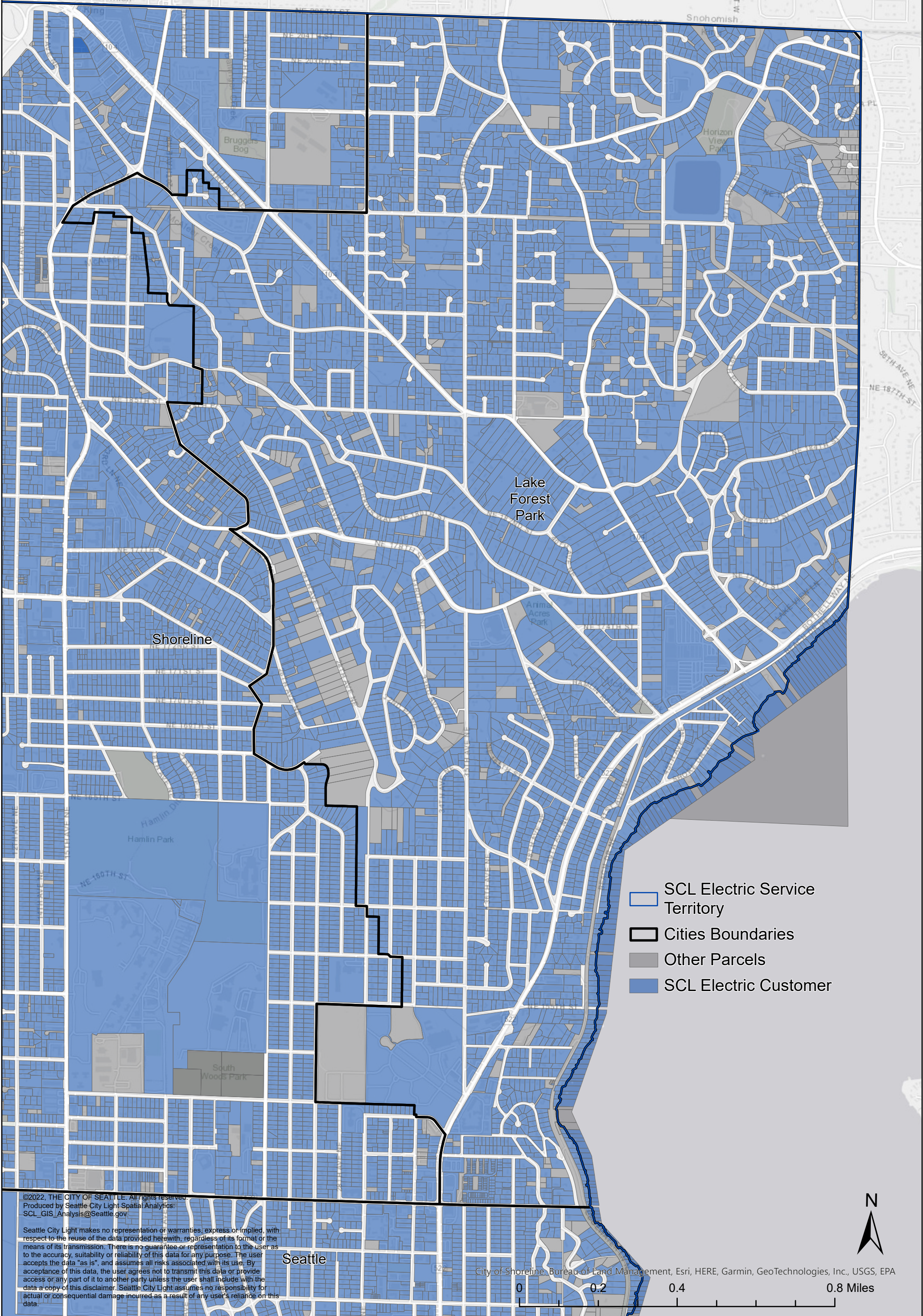
Copy received for City of Lake Forest Park
on _____, 2022

By: _____
City Clerk



Seattle City Light Service Area

Customers: Lake Forest Park





CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	7/14/2022
Originating Department	Public Works
Contact Person	Jeff Perrigo, Public Works Director Kim Adams Pratt, City Attorney
Title	Ordinance 1243 granting XO Communications, LLC, a Master Use Permit in the public right-of-way of Lake Forest Park for a telecommunications system

Legislative History

- First Presentation: June 23, 2022
- Second Presentation: July 14, 2022

Attachments:

1. Ordinance No. 1243 granting XO Communications Services, LLC a Master Use Permit
2. Exhibit A, Master Use Permit

Executive Summary

This is the City Council’s second touch of a proposed ordinance granting XO Communications Services, LLC (“XO Communications”) a five-year master use permit. On May 12, 2016, the City Council approved Ordinance No. 1125, granting XO Communications a five-year nonexclusive Master Use Permit allowing the company to operate telecommunications facilities within the City’s rights-of-way. This previous Master Use Permit has since expired and XO Communications has applied for a successor agreement to allow it to continue operating telecommunications facilities within the City’s rights-of-ways. Approval of this Ordinance would grant XO Communications a new, nonexclusive Master Use Permit allowing continued use of the City’s rights-of-ways for an additional five years under the terms and conditions set forth therein.

Background

The federal Telecommunications Act of 1996 was adopted to encourage the development of high technology communications systems through increased competition among companies. The Act provides that no local jurisdiction may prohibit any entity from providing telecommunications services, but may manage its public rights-of-way in a competitively neutral manner and require compensation from telecommunications providers for their use of right-of-way, provided that such compensation is fair, reasonable, nondiscriminatory, competitively neutral and publicly disclosed.

In Washington, cities manage their rights-of-way with respect to telecommunications providers pursuant to Chapter 35.99 RCW. This statute allows cities to issue a telecommunications “master permit,” which is defined as “the agreement in whatever form whereby a city or town may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating [telecommunications] facilities.” The City has adopted procedures and criteria for the issuance of telecommunications master permits in Chapter 5.26 of the Lake Forest Park Municipal Code (“LFPMC”). After the Council grants a master permit, when a permittee wishes to work in the right-of-way it must apply for a right-of-way permit. It is at this time when the public works and planning departments review the specific plans for the project including the proposed route, the traffic safety plans, and the determination about whether the applicant needs additional permits such as sensitive area permits.

Provisions in the proposed XO Communications master use permit include:

- Expiration in 5 (five) years;
- Non-exclusivity;
- Location approval and oversight by the City Administrator and Public Works Director; and
- Compliance with Chapter 19.122 RCW, Washington State’s “Underground Utilities” statute, where applicable.

Fiscal & Policy Implications

Collection of permit fees.

Alternatives

Options	Results
• Approve the Ordinance.	XO Communications will retain existing telecommunications facilities within the City’s rights of way and may expand such facilities after obtaining right of way permits from the City.
• Do not approve the Ordinance	The City would continue working with XO Communications until terms acceptable to both the company and the City Council could be negotiated.

Staff Recommendation

Approve and adopt Ordinance 1243 granting XO Communications, LLC, a five-year Master Use Permit in the public right-of-way of the City for a telecommunications system.

ORDINANCE NO. 1243

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, GRANTING TO XO COMMUNICATIONS SERVICES, LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE MASTER PERMIT, FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATION SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY

WHEREAS, XO Communications Services, LLC, a limited liability company (the “Company”) owns and operates a telecommunications system; and

WHEREAS, the City Council of Lake Forest Park (the “City”) has previously approved Master Use Permits for the Company by adoption of Ordinance no. 1017 and Ordinance no. 1131. The later will expire October 1, 2022; and

WHEREAS, the Company desires to obtain from the City a new Master Use Permit to continue to allow the Company to install, operate, and maintain a telecommunications system in the public rights-of-way of the City; and

WHEREAS, the City Council has the authority to grant Master Use Permits for the use of its streets and other public properties pursuant to RCW 35A.47.040, RCW Ch. 35.99, and Chapter 5.26 of the Lake Forest Park Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANT MUP. The City Council hereby grants a Master Use Permit to Company for a telecommunications system, with terms and conditions substantially as set forth in Exhibit A hereto. The initial term of the Master Permit shall be 5 (five) years commencing on the effective date of this Ordinance, after which time the Master Use Permit may be renewed or reinstated by ordinance of the City Council for a term determined by the City Council. This Master Permit is issued pursuant to Chapter 5.26 LFPMC, which is incorporated herein by reference. Further, the City Attorney is authorized to make non-substantive, administrative edits to the Master Use Permit.

Section 2. SEVERABILITY. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

Section 3. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this ____ day of _____, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matt McLean, CMC
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced: June 23, 2022
Adopted: _____
Posted: _____
Published: _____
Effective: _____

**XO COMMUNICATIONS SERVICES, LLC MASTER USE
PERMIT FOR OPERATION OF TELECOMMUNICATIONS
FACILITIES WITHIN THE CITY OF LAKE FOREST PARK**

WHEREAS, XO Communications Services, LLC, a limited liability company (the "Company"), owns and operates a telecommunications system; and

WHEREAS, the Company desires to install, operate, and/or maintain a telecommunications system in the public rights-of-way of the City of Lake Forest Park (the "City"); and

WHEREAS, the City Council has the authority to grant Master Permits for the use of its streets and other public properties for telecommunications facilities pursuant to RCW 35A.47.040, RCW 35.99.020, and Chapter 5.26 of the Lake Forest Park Municipal Code (the "LFPMC").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Master Permit Granted. This Master Permit is issued pursuant to Chapter 5.26 LFPMC, which is incorporated herein by reference. Subject to the terms and conditions hereinafter set forth, and to approval by the City Council via Ordinance, the City grants to the Company a Master Permit for a telecommunications system for the purposes of providing fiber optic network for telecommunication services. The term of the Master Permit shall be as set forth in the Ordinance approving this Master Permit. This Franchise does not grant Grantee the right to install and/or operate Wireless Communication Facilities. As used herein, "Wireless Communication Facilities" means any unstaffed facility for the transmission and/or reception of radio frequency signals through electromagnetic energy usually consisting of an equipment shelter or cabinet, a support tower or other structures used to achieve the necessary elevation, and the transmission and reception devices or antenna. Any entity that seeks to install and/or operate such Wireless Communication Facilities must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable services as defined in 47 U.S.C. Section 522(6).

This Master Permit grants to the Company the right, privilege, and authority to construct, operate, maintain, remove, replace, and repair all necessary facilities for the above-described telecommunications system, in, under, on, across, over, through, along, or below the public rights-of-way located in the City and shown on the map attached as Exhibit 1 hereto and incorporated herein by reference, as approved under City permits issued pursuant to applicable City codes and regulations. Any reference herein to a public right-of-way shall not be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Master Permit shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give.

This Master Permit does not convey any equitable or legal title to the public rights-of-way. The right granted is only the right to occupy public rights-of-way. This Master Permit does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and this Master Permit or consent to occupy any location in the public right-of-way is revocable and terminable at the lawful discretion of the City; and, if so revoked, the facility shall be removed at the cost of the Company in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

Section 2. Definitions.

“Administrator.” The City Administrator of the City of Lake Forest Park, or a designee of the Administrator.

“Engineer.” The Public Works Director or designee authorized to administer this Master Permit.

“Public Works Director.” The appointed Public Works Director of the City of Lake Forest Park, or the designee of the Public Works Director.

Other terms. Unless otherwise defined, terms used in this Ordinance shall have the meaning set forth in Chapter 5.26 LFPMC.

Section 3. Non-Exclusive Master Permit. This Master Permit is non-exclusive, and the City reserves the right to grant other or further Master Permits or franchises in, along, over, through, under, below, or across any of its public rights-of-way. This Master Permit shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, and dedication of same, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

Section 4. Compensation.

A. Per RCW 35.21.860, the Company shall compensate the City for its costs related to receiving and approving its Master Permit, including the costs associated with the City’s legal costs incurred in drafting and processing this Master Permit. Company shall pay all costs of publication of this Master Permit and any and all notices prior to any public meeting or hearing in connection with this Master Permit. Company shall pay the reimbursements per this section 4.A upon acceptance of this Master Permit. No permits shall be issued for the installation of Facilities until such time as the City has received payment.

B. The Company shall pay the costs to process any subsequent right-of-way permits issued pursuant to this Master Permit, other permits required under the LFPMC, the costs

of inspecting plans and construction pursuant thereto, or the cost of the preparation of a detailed statement pursuant to Chapter 43.21C RCW.

1. Costs shall be billed to the Company in the manner and at the rates provided in a resolution adopted by the City Council.

2. Fees must be paid within 30 days of receipt of the City's billing.

3. On request of the Company, the City will submit proof of any charges or expenses incurred. For any project or time frame, the Company can request a written estimate from the Administrator, in advance of costs planned to be expended by the City, and the Company may object to any costs by filing written protest with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City.

B. The Company shall compensate the City for its actual incremental costs necessarily incurred on City public works projects because of the presence of Company's telecommunications system in the right-of-way.

1. Fees must be paid within 30 days of receipt of the City's billing; thereafter, amounts due shall bear interest at 6% per annum.

2. On request of the Company, the City will submit proof of such incremental costs.

3. Before commencing work, the City shall notify the Company of its proposed project, and the incremental costs the City estimates will be incurred. The Company may object to any cost estimates by filing written protest of the cost estimate with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City. In the event unforeseen costs are actually incurred by the City, the City shall bill such costs to the Company and such costs shall be paid within 30 days of receipt of the City's billing. The Company may object to any unforeseen costs by filing a written protest with the Administrator. The Administrator shall decide the protest of any unforeseen costs within five business days, and the decision shall be the final decision of the City.

C. Company hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Master Permit. The City hereby reserves its right to impose a franchise fee on Company if Company's operations as authorized by this Master Permit change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Company obtain a separate Master Permit for its change in use. Nothing contained herein shall preclude Company from challenging any such new fee or separate agreement under applicable

federal, state, or local laws.

Section 5. Conditions governing use of public rights-of-way.

A. Before any work is performed in the public right-of-way, the Company shall obtain a right-of-way permit in accordance with Chapter 12.04 LFPMC. An application for a right-of-way permit by the Company shall be approved or disapproved within thirty days of the date of the filing of a complete application. A right-of-way permit shall incorporate the requirements of this Master Permit and Chapter 5.26 LFPMC in addition to the requirements of Chapter 12.04 LFPMC.

B. Except as expressly provided otherwise, any act that the Company, its contractors or subcontractors are required to perform under this section shall be performed at their cost. If the Company fails to perform work that it is required to perform within the time provided for performance specified within the right-of-way permit, the City may perform the work and bill the Company therefore. The Company shall pay the amounts billed within 30 days.

C. Construction Procedures and Placement of Facilities – Obligation to Minimize Interference with Use of Public Rights-of-Way.

1. The construction, operation, and repair of communications facilities are subject to the supervision of all of the authorities of the City with jurisdiction over such matters and shall be performed in compliance with all laws, ordinances, departmental rules and regulations affecting such system.

2. The construction, operation, and repair shall be performed in a manner consistent with high industry standards. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property or interfere with traffic or the use of adjoining property. All work performed by the Company or its contractors shall be accomplished in a safe and competent manner. The Company shall comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

3. Construction, operation, or repair of a communications system shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid and bonds or other performance security provided. In any permit so issued, the City may impose as a condition of the granting of the permit such conditions and regulations as may be necessary to the management of the rights-of-way, including, by way of example and not limitation, for the purpose of protecting any structures in the public rights-of-way, for the proper restoration of such public rights-of-way and structures, and for the protection of the City and the public and the continuity of pedestrian and vehicular traffic.

4. Whenever a Company facility located in a right-of-way endangers property, health, or safety, or whenever necessary to temporarily restore communications system services that have been disrupted by storms, earthquakes, riots or other unexpected accidents the Company shall immediately take proper emergency measures, without first obtaining a permit as required by this Master Permit. However, the Company shall notify the City of the work no later than the next succeeding business day and apply for a right-of-way permit by the next business day; provided that the Company shall be required to conform any work performed before a right-of-way permit was issued and to perform any other work in accordance with the requirements of the permit.

If work related to facilities authorized by this Master Permit endangers property or the public's health and safety, the Public Works Director may direct the Company, at the Company's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the Company, the City shall notify the Company as follows: name: MCI One Call; emergency number 1-800-624-9675; local contact person Randal Schreur and cell/pager 206-472-0247. The Company must notify the City if the person(s) or contact information changes.

If the Company does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the Company shall be liable to the City for the costs thereof.

5. The Company shall follow City-established requirements for placement of facilities in public rights-of-way, including the specific location of facilities in the public rights-of-way, and shall install facilities in a manner that minimizes interference with the use of the public rights-of-way by others. The City may require the installation of facilities at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way; it may require a person using the rights-of-way to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching, joint use of facilities and other arrangements; it may deny access if the Company is not willing to comply with the City's lawful requirements that allows operator to provide its services; it may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place, or manner of installation; and it shall charge the Company for all the costs associated with removal.

6. Upon order of the Administrator, all work that does not comply with this Master Permit, the approved plans or specifications for the work, or the requirements of Chapter 5.26 LFP MC or other applicable law shall be removed.

7. Unless otherwise agreed or provided in this Master Permit or a right-of-way permit, the Company shall be required to reimburse and hold harmless the City for any cost or expense reasonably incurred by the City in the planning, construction, installing, altering, or implementing any public work as a result of the construction or the presence in the public right-of-way of the facility of the Company.

8. The specific location within the right-of-way and the method of installing facilities underground or overhead will be subject to approval by the Engineer. Cutting of pavement in the public right-of-way shall be prohibited where the Engineer approves locating underground facilities in the unimproved portions of the right-of-way or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement. Above ground facilities may be camouflaged using cover boxes that imitate trees or rocks.

9. Except to allow for compliance with state or federal law, cutting of pavement may be prohibited in a newly constructed or reconstructed street for a period of five years from the paving of such street or in a street where a trench was previously available for a period of three years from the date the trench was available. The City may require as a condition to the occupancy of the rights-of-way that communications facilities be located in existing underground ducts or conduits wherever the capacity exists; provided, however, the Engineer may in his or her discretion permit pot-holing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence satisfactory to the Engineer that:

- a. Such pot-holing is necessary to avoid interference with existing utilities;
- b. Such pot-holing is the only reasonable alternative available to locate existing utilities; and
- c. Such pot-holing will result in little or no visual or other detrimental impact to the street.

10. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, operation, repair or removal of a communications facility shall be promptly repaired by the Company. Public property and public right-of-way must be restored to the satisfaction of the City and to a condition as good as or better than before the disturbance or damage occurred and to the standards established on the approved plans, or permit conditions, whichever is greater. The Public Works Director shall have final approval of the condition of such streets and public places after restoration, such approval not being unreasonably withheld. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state, and local standards and specifications. The Company shall complete all restoration work promptly and promptly repair any damage caused by such work.

11. The Company shall continue to maintain the restored street area, which may consist of curb, gutter, sidewalk, pavement, or other restored appurtenances, in a condition as good as or better than the condition of the adjacent undisturbed area of the street for the life of the street when such maintenance or restoration is required as:

- a. A result of the restored street area being defective or otherwise inferior to the

adjacent undisturbed area of the street, or

b. A result of the presence of the facilities of the communications system operator until the restored area is repaved or reconstructed by a different party.

12. Tree trimming shall not be performed without the permission of the City and other affected authorities, and tree trimming must be performed in strict accordance with the City code.

13. Within 48 hours after notice from the City in accordance with Section 5.C.4, the Company shall remove any graffiti on any part of its communications system in the public rights-of-way. If the operator fails to do so, the City may remove the graffiti and bill the Company for the cost thereof.

D. Relocation and Abandonment of Facilities.

1. The Company shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility or improvement, or any government-owned utility; public right-of-way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the communications facility. Collectively, such matters are referred to below as the "public work."

a. Except in the case of emergencies, the City shall provide written notice describing where the public work is to be performed as soon as practical but at least 30 days prior to the deadline by which the Company must protect, support, temporarily disconnect, relocate or remove its facilities. The Company may seek an extension of the time to perform such tasks where they cannot be performed in 30 days or by the completion time specified even with the exercise of its best efforts, and such request for an extension shall not be unreasonably refused.

b. If the Company does not comply with the requirements of Chapter 5.26 LFPMP, and to the extent that this Master Permit or any applicable right-of-way permit does not provide otherwise, and if not prohibited by applicable law, the City shall have the right to revoke any right of the Company to have its facilities remain at a specific location in the public right-of-way whenever the City determines that the facilities of the Company must be removed from their present location in order to facilitate a public work in the public right-of-way; and upon revocation of the Master Permit, license or right-of-way permit of the Company, the Company shall remove the same and restore the public right of way at its cost.

2. If any person that is authorized to place facilities in the rights-of-way requests the Company to protect, support, temporarily disconnect, remove, or relocate its facilities

to accommodate the construction, operation, or repair of the facilities of such other person, the Company shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action on behalf of such party.

3. The Company shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. The Company shall be given not less than seven days' advance notice to arrange for such temporary wire changes.

4. The Company may abandon and surrender its Master Permit to the City on six months' written notice to the Administrator, with copies served on the mayor and City attorney. Abandonment shall be subject to acceptance by the City, by a resolution of acceptance adopted by the City Council. Upon abandonment, non-renewal, revocation or expiration of this Master Permit, and if no extension is granted, the Company may, at the discretion of the Administrator, be required, in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Master Permit. Alternatively, the Administrator may direct, limit or condition the Company's removal, sale or continued use or abandonment of grantee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. The City may continue to invoke any provision of this Master Permit against the Company or any successor entity enjoying de facto Master Permit privileges after revocation or expiration. The City may take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interests of the City and its residents.

E. Every communications facility shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter 5.26 LFPMC, this Master Permit and any right-of-way permit, and other applicable law. The City shall have the right, upon request, to be notified and be present when the communications system is inspected by the Company to determine compliance with the provisions of Chapter 5.26 LFPMC, this Master Permit, any right-of-way permit, or applicable law where the City has enforcement authority. The Company shall respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plan is being constructed, operated, or repaired to the extent such plant is or will be in the public right-of-way or has been or will be provided under this Master Permit or any right-of-way permit granted by or requested from the City.

F. The Company, if it places facilities underground, shall be a member of the regional notification center for subsurface installations and shall field mark the locations of

its underground communications facilities upon request. The Company shall locate its facilities for the City at no charge. The Company shall reasonably cooperate with City initiatives to coordinate underground fixture locations and installations. The Company shall be familiar with Chapter 19.122 RCW, Washington State's "Underground Utilities" statute. The Company shall certify that it understands local procedures, custom and practice relating to facilities locating, and shall ensure that its contractors or others working in the right-of-way on grantee's behalf are similarly well informed.

G. The Company shall recognize the City's right to preserve and control of the public right-of-way, particularly with respect to policies regarding the undergrounding of overhead lines for aesthetic reasons. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the City reserves the right to require the Company's participation in municipally imposed undergrounding or related requirements as may now or hereafter arise, as a condition of the operator's new installation or major maintenance or restoration construction activities of overhead facilities under this franchise. The Company shall coordinate its underground installation and planning activities with the City's underground plan and policies; provided, in no event shall any third-party beneficiary rights be implied or created. Nothing in this section shall be permitted in conflict with RCW 35.99.060, and the provisions of this section shall be applied in conformity thereto.

H. The Company may request reimbursement from the City as provided in RCW 35.99.060(3)(a)-(c) and if so requested the City shall make reimbursement as provided therein.

I. Plans for and Publicizing Work.

1. Work shall be publicized as the City may direct from time to time to notify the public and operators of other communications systems, of the impending work, to minimize inconvenience and disruption to the public and to allow for cooperative construction and for joint use of trenches and facilities.

2. The Company shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected.

3. The Company shall supply and maintain updated, at no cost, any information requested by the Administrator to coordinate municipal functions with the operator's activities and fulfill any municipal obligations under state law. The Administrator may request information concerning an installation inventory, location of existing or planned facilities, maps, plans, and as-built drawings of the operator's installations in the City. The information may be requested either in hard copy and/or electronic format compatible with the City's data base system. The Company shall keep the Administrator informed of its long-range plans for coordination with the City's long-range plans.

4. The Company shall maintain accurate maps and improvements plans which

show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. The Company shall provide a 24-inch by 36-inch map to the City showing the location of its facilities, in such detail and scale as may be directed by the Engineer. New system maps shall be promptly submitted to the City when the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the Engineer or in such alternate form as approved by the Engineer.

5. The Administrator may when the City receives application for a permit to use a particular route, or on the Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may:

- a. Require all persons who wish to place underground facilities along that route or any part thereof to install them during a specified period; and
- b. To the extent allowed by law, otherwise prohibit placement of such facilities along the route or any part thereof for 36 months or for such other, longer period as is necessary to protect the public.

Section 6. Indemnification. The Company shall release, indemnify, and defend the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the Company, its agents, servants, officers, or employees, performed under authority of this Master Permit; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Company and the City, its officers, employees, and agents, the Company's obligation shall be only to the extent of the Company's negligence. This indemnification includes claims by the Company's own employees for which the Company might otherwise be immune under Title 51 RCW, and the Company waives its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by the Company at the time of completion of construction shall not relieve the Company of any of its obligations under this Section.

If a court or other tribunal agreed upon by the parties determines that the Company wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the Company shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

Section 7. Insurance. The Company shall procure and maintain for the duration of the Master Permit, insurance against claims for injuries to persons or damages to

property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Company. The Company shall provide a blanket additional insured endorsement, including the City as an additional insured as its interest may appear under this Agreement, upon execution of this Master Permit Ordinance, and such endorsement shall evidence a policy of insurance that includes:

A. Commercial General Liability Insurance to Cover Liability Bodily Injury and Property Damage. The above referenced endorsement shall be as broad as (or better than) ISO endorsement CG 20 26 12 19. Exposures to be covered are: premises, operations, products/completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability:

1. Bodily Injury.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

2. Property Damage.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

3. Personal and Advertising Injury.

Annual aggregate: \$3,000,000.

4. Contractors Pollution Liability

Each occurrence: \$2,000,000.
Annual aggregate: \$2,000,000.

4. Completed operations and products liability shall be maintained for two years after the termination of the master permit or license (in the case of the communications system owner or operator) or completion of the work for the communications system owner or operator (in the case of a contractor or subcontractor).

5. Property damage liability insurance shall include coverage for the following hazards: X- Explosion, C- Collapse, U- Underground.

B. Workers' compensation coverage as required by the Industrial Insurance laws of the State of Washington.

C. The Company shall maintain commercial automobile liability in the amount of \$5,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned, and hired vehicles use in connection with this Agreement

D. Upon receipt of notice from its insurer(s) the Company shall provide the City

with thirty (30) days' prior written notice of cancellation of any required coverage. Both the Commercial General Liability Insurance and the Commercial Auto Liability Insurance shall be endorsed to include the City as an additional insured as its interest may appear under this Agreement. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial ratings must be no less than "A-" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. The City reserves the right, upon prior written notice to require any other insurance coverage it deems necessary depending upon the exposures. Further, in the event the Company is self-insured, the Company shall furnish proof of self-insurance and shall warrant to the City that its self-insurance meets the criteria defined in this Agreement. Further, the Company shall assume all liability for deficiencies in their self-insurance to the extent it fails to meet the terms outlined in this Agreement.

F. The Company shall require any contractors and subcontractors to obtain and maintain equivalent or greater coverage as required of the Company, and the Company shall have sole responsibility for determining the limits of coverage required to be obtained by contractors and subcontractors. The Company shall ensure that the City is an additional insured on each and every contractor and subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

Section 8. Modification. The terms and conditions of this Master Permit may be modified upon written agreement of the parties.

Section 9. Forfeiture and Revocation. If the Company willfully fails to comply with any provision of this Master Permit, or through willful misconduct or gross negligence fails to comply with any notice given the Company by the City under the provisions of this Master Permit, or if any of the provisions of LFPMC 5.26.090(D) apply, then this Master Permit may be revoked pursuant to LFPMC 5.26.090.

Section 10. Remedies to Enforce Compliance. In addition to any other remedy, the City may obtain a superior court order compelling the Company to comply with the provisions of this Ordinance and seek to recover damages and costs incurred by the City by reason of the Company's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under Section 9.

Section 11. City Ordinances and Regulations. This Master Permit shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this Master Permit, including any valid ordinance made in the exercise of its police powers. The City retains its authority to control by reasonable regulations the location, elevation, manner of construction, and maintenance of Company's telecommunications system in the public rights-of-way, and the Company shall conform with all such regulations, unless compliance would cause the Company to violate other requirements of law. In the event of a conflict between the provisions of this Master Permit and any other ordinance(s) enacted under the City's police power, such other ordinance(s) shall take precedence.

Section 12. Cost of Publication. The cost of the publication of this Ordinance shall be borne by the Company.

Section 13. Acceptance. Unless extended by Ordinance, the Company shall have sixty (60) days after the passage and approval of this Ordinance to file with the City Clerk its unconditional written acceptance of this Master Permit; otherwise, the Company shall be deemed to have rejected this Master Permit.

Section 14. Survival. Sections 5, Conditions governing use of public rights-of-way, and 6, Indemnification, shall be in addition to any and all other obligations and liabilities the Company may have to the City at common law, by statute, or by contract, and shall survive the City's Master Permit to the Company for the use of the City rights-of-way. This Ordinance is binding upon the successors and assigns of the Company and all privileges, as well as all obligations and liabilities of the Company shall inure to its successors and assigns.

Section 15. Assignment.

A. This Master Permit shall not be sold, leased, assigned, or otherwise alienated without the express consent of the City, and no rule of estoppel shall be invoked against the City in case the City shall assert the invalidity of any attempted transfer in violation of this section. The City agrees not to withhold consent where the Company demonstrates that the requested assignment is in the nature of a change of name or a change in the nature of a reorganization or merger of or with an entity controlled by, controlling, or under the common control of the Company, there being no other change in the resulting entity's ability to meet its master permit obligations hereunder. Such consent may be granted by the City Administrator and this Master Permit may be administratively amended to reflect any such changes without the need for further City Council action or amendments to the adopting Ordinance.

B. The City reserves the right to invoke any or all provisions of this master permit upon the Company's successors or assigns, judgment creditors, or distributors of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new master permit or license. This includes, but may not be limited to, requirements for filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this master permit and paying all direct costs to the City related to the transfer or assignment.

C. The Company shall not permit installations by others in the permitted areas, without written approval from the administrator. Such approval shall not be in lieu of a master permit or license or other requirements of the City. Whether or not permitted, the Company shall remain responsible for all third-party users permitted or allowed by the Company for compliance with this master permit. The intent of this provision is to require third parties, who might otherwise desire to use the Company's facilities, to also comply

with applicable City requirements regarding master permits or right-of-way permits.

Section 16. Notice. Any notice, except a notice under Section 5.C.4, required or permitted by this Master Permit must be sent to the addresses specified below. This Master Permit may be administratively amended to update this contact information as needed without the need for City Council action or amendments to the adopting Ordinance.

CITY OF LAKE FOREST PARK
City Administrator
17425 Ballinger Way N.E.
Lake Forest Park, WA 98155

XO COMMUNICATIONS SERVICES, LLC
Attn: Franchise Manager
600 Hidden Ridge, E02E102
Irving, TX 75038

Copy to:

Verizon Legal Department
Attn: Network Legal Team
1300 I Street, NW
5th Floor
Washington, DC 20005

Section 17. Venue and Jurisdiction. This Master Permit shall be construed in accordance with the laws of the State of Washington. Venue for any disputes arising out of this Master Permit shall be filed and adjudicated in either the United States District Court for the Western District of Washington or King County Superior Court.

Section 18. Work of Contractors and Subcontractors. The Company's contractors and subcontractors shall be licensed and bonded in accordance with state law and the City'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 the Company. The Company 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 the Company and shall ensure that all such work is performed in compliance with this Master Permit and applicable law.

Section 19. Term. The term of this Master Permit shall be as set forth in the Ordinance approving, renewing, or restating this Master Permit.

EXECUTED this ____ day of _____, 2022.

City of Lake Forest Park

**XO Communications Services,
LLC**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

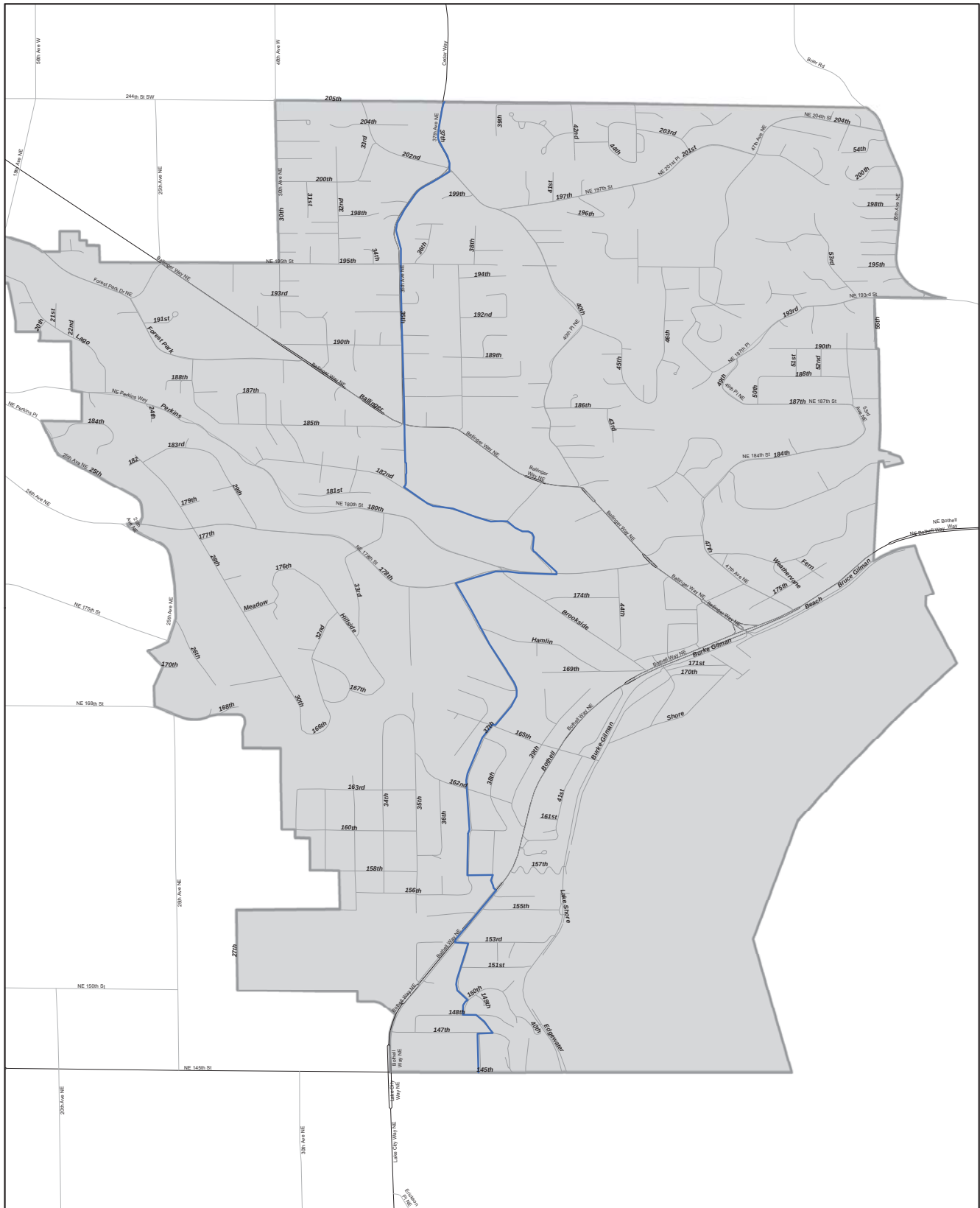
Date: _____

Approved as to Form:

Kim Adams Pratt, City Attorney

**XO Communications Services, LLC
Existing Fiber
City of Lake Forest Park, WA**

Section 8, ItemB.



Buried -19,376 LF
Lake Forest Park

Confidentiality Statement: Confidential and proprietary materials for authorized Verizon personnel and outside agencies only. Use, disclosure or distribution of this materials not permitted to any authorized persons or third parties except by written agreement.



Data Source: VZB
Projection: GCS_WGS_1984
Map Created: 5/18/2022
Map Created By: Andres McDonnell



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	7/14/2022
Originating Department	Public Works
Contact Person	Jeff Perrigo, Public Works Director
	Kim Adams Pratt, City Attorney
Title	Ordinance 1244 granting MCImetro Access Transmission Services Corporation a Master Use Permit in the public right-of-way of Lake Forest Park for a telecommunications system

Legislative History

- First Presentation: June 23, 2022
- Second Presentation: July 14, 2022

Attachments:

1. Ordinance No. 1244 granting MCImetro Access Transmission Services Corporation a Master Use Permit
2. Exhibit A, Master Use Permit

Executive Summary

This is the City Council’s second touch of a proposed ordinance granting MCImetro Access Transmission Services Corporation (“MCImetro”) a five-year master use permit. The City Council has previously approved Ordinance No. 1017 and Ordinance 1131 granting MCImetro successive five-year nonexclusive Master Use Permits allowing the company to operate telecommunications facilities within the City’s right-of-way. The last Master Use Permit granted to MCImetro expired May 21, 2022, and MCImetro has applied for a successor agreement to allow it to continue operating telecommunications facilities within the City’s right-of-way. Approval of this Ordinance would grant MCImetro a new, nonexclusive Master Use Permit allowing continued use of the City’s right-of-way for five years under the terms and conditions set forth in the Master Use Permit.

Background

The federal Telecommunications Act of 1996 was adopted to encourage the development of high technology communications systems through increased competition among companies. The Act provides that no local jurisdiction may prohibit any entity from providing telecommunications services, but may manage its public rights-of-way in a competitively neutral manner and require compensation from telecommunications providers for their use of right-of-way, provided that such compensation is fair, reasonable, nondiscriminatory, competitively neutral and publicly disclosed.

In Washington, cities manage their right-of-way with respect to telecommunications providers pursuant to Chapter 35.99 RCW. This statute allows cities to issue a telecommunications “master permit,” which is defined as “the agreement in whatever form whereby a city or town may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating [telecommunications] facilities.” The City has adopted procedures and criteria for the issuance of telecommunications master permits in Chapter 5.26 of the Lake Forest Park Municipal Code (“LFPMC”). After the Council grants a master permit, when a permittee wishes to work in the right-of-way it must apply for a right-of-way permit. It is at this time when the public works and planning departments review the specific plans for the project including the proposed route, the traffic safety plans, and the determination about whether the applicant needs additional permits such as sensitive area permits.

Provisions in the proposed MCImetro Master Use Permit include:

- Expiration in 5 (five) years;
- Non-exclusivity;
- Location approval and oversight by the City Administrator and Public Works Director; and
- Compliance with Chapter 19.122 RCW, Washington State’s “Underground Utilities” statute, where applicable.

Fiscal & Policy Implications
Collection of permit fees.

Alternatives

<i>Options</i>	<i>Results</i>
• Approve the Ordinance.	MCImetro will retain existing telecommunications facilities within the City’s right-of-way and may expand such facilities after obtaining right of way permits from the City.
• Do not approve the Ordinance	The City would continue working with MCImetro until terms acceptable to both the company and the City Council could be negotiated.

Staff Recommendation

Approve and adopt Ordinance 1244 granting MCImetro Access Transmission Services Corporation, a five-year Master Use Permit in the public right-of-way of the City for a telecommunications system.

ORDINANCE NO. 1244

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORPORATION, D/B/A VERIZON ACCESS TRANSMISSION SERVICES, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE MASTER PERMIT, FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATION SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY

WHEREAS, MCImetro Access Transmission Services Corporation, d/b/a Verizon Access Transmission Services, A Delaware Corporation (the “Company”) owns and operates a telecommunications system; and

WHEREAS, the City Council of Lake Forest Park (the “City”) has previously approved Master Use Permits for the Company by adoption of Ordinance No. 1017 and Ordinance No. 1131; the latter of which expired on May 21, 2022; and

WHEREAS, the Company desires to obtain from the City a new Master Use Permit to continue to allow the Company to install, operate, and maintain a telecommunications system in the public rights-of-way of the City; and

WHEREAS, the City Council has the authority to grant Master Use Permits for the use of its streets and other public properties pursuant to RCW 35A.47.040, Chapter 35.99 RCW, and Chapter 5.26 of the Lake Forest Park Municipal Code (“LFPMC”).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANT OF MUP. The City Council hereby grants a Master Use Permit to Company for a telecommunications system, with terms and conditions substantially as set forth in Exhibit A hereto. The initial term of the Master Permit shall be 5 (five) years commencing on the effective date of this Ordinance, after which time the Master Use Permit may be renewed or reinstated by ordinance of the City Council for a term determined by the City Council. This Master Permit is issued pursuant to Chapter 5.26 LFPMC, which is incorporated herein by reference. Further, the City Attorney is authorized to make non-substantive, administrative edits to the Master Use Permit.

Section 2. SEVERABILITY. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are

materially altered, whereupon either party may request renegotiation of those remaining terms.

Section 3. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this ____ day of _____, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matt McLean, CMC
City Clerk

APPROVED AS TO FORM:

Kim Adams Pratt
City Attorney

Introduced: June 23, 2022
Adopted: _____
Posted: _____
Published: _____
Effective: _____

**MCIMETRO ACCESS TRANSMISSION SERVICES CORP.
D/B/A VERIZON ACCESS TRANSMISSION SERVICES
MASTER USE PERMIT FOR OPERATION OF
TELECOMMUNICATIONS FACILITIES WITHIN THE CITY
OF LAKE FOREST PARK**

WHEREAS, MCImetro Access Transmission Service Corp. d/b/a Verizon Access Transmission Services, a Delaware Corporation (the "Company"), owns and operates a telecommunications system; and

WHEREAS, the Company desires to install, operate, and/or maintain a telecommunications system in the public rights-of-way of the City of Lake Forest Park (the "City"); and

WHEREAS, the City Council has the authority to grant Master Permits for the use of its streets and other public properties for telecommunications facilities pursuant to RCW 35A.47.040, RCW 35.99.020, and Chapter 5.26 of the Lake Forest Park Municipal Code (the "LFPMC").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Master Permit Granted. This Master Permit is issued pursuant to Chapter 5.26 LFPMC, which is incorporated herein by reference. Subject to the terms and conditions hereinafter set forth, and to approval by the City Council via Ordinance, the City grants to the Company a Master Permit for a telecommunications system for the purposes of providing fiber optic network for telecommunication services. The term of the Master Permit shall be as set forth in the Ordinance approving this Master Permit. This Franchise does not grant Grantee the right to install and/or operate Wireless Communication Facilities. As used herein, "Wireless Communication Facilities" means any unstaffed facility for the transmission and/or reception of radio frequency signals through electromagnetic energy usually consisting of an equipment shelter or cabinet, a support tower or other structures used to achieve the necessary elevation, and the transmission and reception devices or antenna. Any entity that seeks to install and/or operate such Wireless Communication Facilities must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable services as defined in 47 U.S.C. Section 522(6).

This Master Permit grants to the Company the right, privilege, and authority to construct, operate, maintain, remove, replace, and repair all necessary facilities for the above-described telecommunications system, in, under, on, across, over, through, along, or below the public rights-of-way located in the City and shown on the map attached as Exhibit 1 hereto and incorporated herein by reference, as approved under City permits issued pursuant to applicable City codes and regulations. Any reference herein to a public right-of-way shall not be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Master Permit shall be deemed to grant no more than those rights

which the City may have the undisputed right and power to give.

This Master Permit does not convey any equitable or legal title to the public rights-of-way. The right granted is only the right to occupy public rights-of-way. This Master Permit does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and this Master Permit or consent to occupy any location in the public right-of-way is revocable and terminable at the lawful discretion of the City; and, if so revoked, the facility shall be removed at the cost of the Company in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

Section 2. Definitions.

“Administrator.” The City Administrator of the City of Lake Forest Park, or a designee of the Administrator.

“Engineer.” The Public Works Director or designee authorized to administer this Master Permit.

“Public Works Director.” The appointed Public Works Director of the City of Lake Forest Park, or the designee of the Public Works Director.

Other terms. Unless otherwise defined, terms used in this Ordinance shall have the meaning set forth in Chapter 5.26 LFPMP.

Section 3. Non-Exclusive Master Permit. This Master Permit is non-exclusive, and the City reserves the right to grant other or further Master Permits or franchises in, along, over, through, under, below, or across any of its public rights-of-way. This Master Permit shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, and dedication of same, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

Section 4. Compensation.

A. Per RCW 35.21.860, the Company shall compensate the City for its costs related to receiving and approving its Master Permit, including the costs associated with the City’s legal costs incurred in drafting and processing this Master Permit. Company shall pay all costs of publication of this Master Permit and any and all notices prior to any public meeting or hearing in connection with this Master Permit. Company shall pay the reimbursements per this section 4.A upon acceptance of this Master Permit. No permits shall be issued for the installation of Facilities until such time as the City has received payment.

B. The Company shall pay the costs to process any subsequent right-of-way permits

issued pursuant to this Master Permit, other permits required under the LFPMC, the costs of inspecting plans and construction pursuant thereto, or the cost of the preparation of a detailed statement pursuant to Chapter 43.21C RCW.

1. Costs shall be billed to the Company in the manner and at the rates provided in a resolution adopted by the City Council.

2. Fees must be paid within 30 days of receipt of the City's billing.

3. On request of the Company, the City will submit proof of any charges or expenses incurred. For any project or time frame, the Company can request a written estimate from the Administrator, in advance of costs planned to be expended by the City, and the Company may object to any costs by filing written protest with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City.

B. The Company shall compensate the City for its actual incremental costs necessarily incurred on City public works projects because of the presence of Company's telecommunications system in the right-of-way.

1. Fees must be paid within 30 days of receipt of the City's billing; thereafter, amounts due shall bear interest at 6% per annum.

2. On request of the Company, the City will submit proof of such incremental costs.

3. Before commencing work, the City shall notify the Company of its proposed project, and the incremental costs the City estimates will be incurred. The Company may object to any cost estimates by filing written protest of the cost estimate with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City. In the event unforeseen costs are actually incurred by the City, the City shall bill such costs to the Company and such costs shall be paid within 30 days of receipt of the City's billing. The Company may object to any unforeseen costs by filing a written protest with the Administrator. The Administrator shall decide the protest of any unforeseen costs within five business days, and the decision shall be the final decision of the City.

C. Company hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Master Permit. The City hereby reserves its right to impose a franchise fee on Company if Company's operations as authorized by this Master Permit change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Company obtain a separate Master Permit for its change in use. Nothing contained herein shall preclude Company from challenging any such new fee or separate agreement under applicable

federal, state, or local laws.

Section 5. Conditions governing use of public rights-of-way.

A. Before any work is performed in the public right-of-way, the Company shall obtain a right-of-way permit in accordance with Chapter 12.04 LFPMC. An application for a right-of-way permit by the Company shall be approved or disapproved within thirty days of the date of the filing of a complete application. A right-of-way permit shall incorporate the requirements of this Master Permit and Chapter 5.26 LFPMC in addition to the requirements of Chapter 12.04 LFPMC.

B. Except as expressly provided otherwise, any act that the Company, its contractors or subcontractors are required to perform under this section shall be performed at their cost. If the Company fails to perform work that it is required to perform within the time provided for performance specified within the right-of-way permit, the City may perform the work and bill the Company therefore. The Company shall pay the amounts billed within 30 days.

C. Construction Procedures and Placement of Facilities – Obligation to Minimize Interference with Use of Public Rights-of-Way.

1. The construction, operation, and repair of communications facilities are subject to the supervision of all of the authorities of the City with jurisdiction over such matters and shall be performed in compliance with all laws, ordinances, departmental rules and regulations affecting such system.

2. The construction, operation, and repair shall be performed in a manner consistent with high industry standards. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property or interfere with traffic or the use of adjoining property. All work performed by the Company or its contractors shall be accomplished in a safe and competent manner. The Company shall comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

3. Construction, operation, or repair of a communications system shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid and bonds or other performance security provided. In any permit so issued, the City may impose as a condition of the granting of the permit such conditions and regulations as may be necessary to the management of the rights-of-way, including, by way of example and not limitation, for the purpose of protecting any structures in the public rights-of-way, for the proper restoration of such public rights-of-way and structures, and for the protection of the City and the public and the continuity of pedestrian and vehicular traffic.

4. Whenever a Company facility located in a right-of-way endangers property,

health, or safety, or whenever necessary to temporarily restore communications system services that have been disrupted by storms, earthquakes, riots or other unexpected accidents the Company shall immediately take proper emergency measures, without first obtaining a permit as required by this Master Permit. However, the Company shall notify the City of the work no later than the next succeeding business day and apply for a right-of-way permit by the next business day; provided that the Company shall be required to conform any work performed before a right-of-way permit was issued and to perform any other work in accordance with the requirements of the permit.

If work related to facilities authorized by this Master Permit endangers property or the public's health and safety, the Public Works Director may direct the Company, at the Company's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the Company, the City shall notify the Company as follows: name: MCI One Call; emergency number 1-800-624-9675; local contact person Randal Schreur and cell/pager 206-472-0247. The Company must notify the City if the person(s) or contact information changes.

If the Company does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the Company shall be liable to the City for the costs thereof.

5. The Company shall follow City-established requirements for placement of facilities in public rights-of-way, including the specific location of facilities in the public rights-of-way, and shall install facilities in a manner that minimizes interference with the use of the public rights-of-way by others. The City may require the installation of facilities at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way; it may require a person using the rights-of-way to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching, joint use of facilities and other arrangements; it may deny access if the Company is not willing to comply with the City's lawful requirements that allows operator to provide its services; it may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place, or manner of installation; and it shall charge the Company for all the costs associated with removal.

6. Upon order of the Administrator, all work that does not comply with this Master Permit, the approved plans or specifications for the work, or the requirements of Chapter 5.26 LFPMP or other applicable law shall be removed.

7. Unless otherwise agreed or provided in this Master Permit or a right-of-way permit, the Company shall be required to reimburse and hold harmless the City for any cost or expense reasonably incurred by the City in the planning, construction, installing, altering, or implementing any public work as a result of the construction or the presence in the public right-of-way of the facility of the Company.

8. The specific location within the right-of-way and the method of installing

facilities underground or overhead will be subject to approval by the Engineer. Cutting of pavement in the public right-of-way shall be prohibited where the Engineer approves locating underground facilities in the unimproved portions of the right-of-way or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement. Above ground facilities may be camouflaged using cover boxes that imitate trees or rocks.

9. Except to allow for compliance with state or federal law, cutting of pavement may be prohibited in a newly constructed or reconstructed street for a period of five years from the paving of such street or in a street where a trench was previously available for a period of three years from the date the trench was available. The City may require as a condition to the occupancy of the rights-of-way that communications facilities be located in existing underground ducts or conduits wherever the capacity exists; provided, however, the Engineer may in his or her discretion permit pot-holing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence satisfactory to the Engineer that:

- a. Such pot-holing is necessary to avoid interference with existing utilities;
- b. Such pot-holing is the only reasonable alternative available to locate existing utilities; and
- c. Such pot-holing will result in little or no visual or other detrimental impact to the street.

10. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, operation, repair or removal of a communications facility shall be promptly repaired by the Company. Public property and public right-of-way must be restored to the satisfaction of the City and to a condition as good as or better than before the disturbance or damage occurred and to the standards established on the approved plans, or permit conditions, whichever is greater. The Public Works Director shall have final approval of the condition of such streets and public places after restoration, such approval not being unreasonably withheld. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state, and local standards and specifications. The Company shall complete all restoration work promptly and promptly repair any damage caused by such work.

11. The Company shall continue to maintain the restored street area, which may consist of curb, gutter, sidewalk, pavement, or other restored appurtenances, in a condition as good as or better than the condition of the adjacent undisturbed area of the street for the life of the street when such maintenance or restoration is required as:

- a. A result of the restored street area being defective or otherwise inferior to the adjacent undisturbed area of the street, or

b. A result of the presence of the facilities of the communications system operator until the restored area is repaved or reconstructed by a different party.

12. Tree trimming shall not be performed without the permission of the City and other affected authorities, and tree trimming must be performed in strict accordance with the City code.

13. Within 48 hours after notice from the City in accordance with Section 5.C.4, the Company shall remove any graffiti on any part of its communications system in the public rights-of-way. If the operator fails to do so, the City may remove the graffiti and bill the Company for the cost thereof.

D. Relocation and Abandonment of Facilities.

1. The Company shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility or improvement, or any government-owned utility; public right-of-way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the communications facility. Collectively, such matters are referred to below as the "public work."

a. Except in the case of emergencies, the City shall provide written notice describing where the public work is to be performed as soon as practical but at least 30 days prior to the deadline by which the Company must protect, support, temporarily disconnect, relocate or remove its facilities. The Company may seek an extension of the time to perform such tasks where they cannot be performed in 30 days or by the completion time specified even with the exercise of its best efforts, and such request for an extension shall not be unreasonably refused.

b. If the Company does not comply with the requirements of Chapter 5.26 LFPMC, and to the extent that this Master Permit or any applicable right-of-way permit does not provide otherwise, and if not prohibited by applicable law, the City shall have the right to revoke any right of the Company to have its facilities remain at a specific location in the public right-of-way whenever the City determines that the facilities of the Company must be removed from their present location in order to facilitate a public work in the public right-of-way; and upon revocation of the Master Permit, license or right-of-way permit of the Company, the Company shall remove the same and restore the public right of way at its cost.

2. If any person that is authorized to place facilities in the rights-of-way requests the Company to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, operation, or repair of the facilities of such other person,

the Company shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action on behalf of such party.

3. The Company shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. The Company shall be given not less than seven days' advance notice to arrange for such temporary wire changes.

4. The Company may abandon and surrender its Master Permit to the City on six months' written notice to the Administrator, with copies served on the mayor and City attorney. Abandonment shall be subject to acceptance by the City, by a resolution of acceptance adopted by the City Council. Upon abandonment, non-renewal, revocation or expiration of this Master Permit, and if no extension is granted, the Company may, at the discretion of the Administrator, be required, in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Master Permit. Alternatively, the Administrator may direct, limit or condition the Company's removal, sale or continued use or abandonment of grantee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. The City may continue to invoke any provision of this Master Permit against the Company or any successor entity enjoying de facto Master Permit privileges after revocation or expiration. The City may take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interests of the City and its residents.

E. Every communications facility shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter 5.26 LFPMC, this Master Permit and any right-of-way permit, and other applicable law. The City shall have the right, upon request, to be notified and be present when the communications system is inspected by the Company to determine compliance with the provisions of Chapter 5.26 LFPMC, this Master Permit, any right-of-way permit, or applicable law where the City has enforcement authority. The Company shall respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plan is being constructed, operated, or repaired to the extent such plant is or will be in the public right-of-way or has been or will be provided under this Master Permit or any right-of-way permit granted by or requested from the City.

F. The Company, if it places facilities underground, shall be a member of the regional notification center for subsurface installations and shall field mark the locations of its underground communications facilities upon request. The Company shall locate its

facilities for the City at no charge. The Company shall reasonably cooperate with City initiatives to coordinate underground fixture locations and installations. The Company shall be familiar with Chapter 19.122 RCW, Washington State's "Underground Utilities" statute. The Company shall certify that it understands local procedures, custom and practice relating to facilities locating, and shall ensure that its contractors or others working in the right-of-way on grantee's behalf are similarly well informed.

G. The Company shall recognize the City's right to preserve and control of the public right-of-way, particularly with respect to policies regarding the undergrounding of overhead lines for aesthetic reasons. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the City reserves the right to require the Company's participation in municipally imposed undergrounding or related requirements as may now or hereafter arise, as a condition of the operator's new installation or major maintenance or restoration construction activities of overhead facilities under this franchise. The Company shall coordinate its underground installation and planning activities with the City's underground plan and policies; provided, in no event shall any third-party beneficiary rights be implied or created. Nothing in this section shall be permitted in conflict with RCW 35.99.060, and the provisions of this section shall be applied in conformity thereto.

H. The Company may request reimbursement from the City as provided in RCW 35.99.060(3)(a)-(c) and if so requested the City shall make reimbursement as provided therein.

I. Plans for and Publicizing Work.

1. Work shall be publicized as the City may direct from time to time to notify the public and operators of other communications systems, of the impending work, to minimize inconvenience and disruption to the public and to allow for cooperative construction and for joint use of trenches and facilities.

2. The Company shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected.

3. The Company shall supply and maintain updated, at no cost, any information requested by the Administrator to coordinate municipal functions with the operator's activities and fulfill any municipal obligations under state law. The Administrator may request information concerning an installation inventory, location of existing or planned facilities, maps, plans, and as-built drawings of the operator's installations in the City. The information may be requested either in hard copy and/or electronic format compatible with the City's data base system. The Company shall keep the Administrator informed of its long-range plans for coordination with the City's long-range plans.

4. The Company shall maintain accurate maps and improvements plans which show the location, size, and a general description of all facilities installed in the public

rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. The Company shall provide a 24-inch by 36-inch map to the City showing the location of its facilities, in such detail and scale as may be directed by the Engineer. New system maps shall be promptly submitted to the City when the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the Engineer or in such alternate form as approved by the Engineer.

5. The Administrator may when the City receives application for a permit to use a particular route, or on the Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may:

a. Require all persons who wish to place underground facilities along that route or any part thereof to install them during a specified period; and

b. To the extent allowed by law, otherwise prohibit placement of such facilities along the route or any part thereof for 36 months or for such other, longer period as is necessary to protect the public.

Section 6. Indemnification. The Company shall release, indemnify, and defend the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the Company, its agents, servants, officers, or employees, performed under authority of this Master Permit; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Company and the City, its officers, employees, and agents, the Company's obligation shall be only to the extent of the Company's negligence. This indemnification includes claims by the Company's own employees for which the Company might otherwise be immune under Title 51 RCW, and the Company waives its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by the Company at the time of completion of construction shall not relieve the Company of any of its obligations under this Section.

If a court or other tribunal agreed upon by the parties determines that the Company wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the Company shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

Section 7. Insurance. The Company shall procure and maintain for the duration of the Master Permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges,

and authority granted hereunder to the Company. The Company shall provide a blanket additional insured endorsement, including the City as an additional insured as its interest may appear under this Agreement, upon execution of this Master Permit Ordinance, and such endorsement shall evidence a policy of insurance that includes:

A. Commercial General Liability Insurance to Cover Liability Bodily Injury and Property Damage. The above referenced endorsement shall be as broad as (or better than) ISO endorsement CG 20 26 12 19. Exposures to be covered are: premises, operations, products/completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability:

1. Bodily Injury.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

2. Property Damage.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

3. Personal and Advertising Injury.

Annual aggregate: \$3,000,000.

4. Contractors Pollution Liability

Each occurrence: \$2,000,000.
Annual aggregate: \$2,000,000.

4. Completed operations and products liability shall be maintained for two years after the termination of the master permit or license (in the case of the communications system owner or operator) or completion of the work for the communications system owner or operator (in the case of a contractor or subcontractor).

5. Property damage liability insurance shall include coverage for the following hazards: X- Explosion, C- Collapse, U- Underground.

B. Workers' compensation coverage as required by the Industrial Insurance laws of the State of Washington.

C. The Company shall maintain commercial automobile liability in the amount of \$5,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned, and hired vehicles use in connection with this Agreement

D. Upon receipt of notice from its insurer(s) the Company shall provide the City with thirty (30) days' prior written notice of cancellation of any required coverage. Both

the Commercial General Liability Insurance and the Commercial Auto Liability Insurance shall be endorsed to include the City as an additional insured as its interest may appear under this Agreement. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial ratings must be no less than "A-" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. The City reserves the right, upon prior written notice to require any other insurance coverage it deems necessary depending upon the exposures. Further, in the event the Company is self-insured, the Company shall furnish proof of self-insurance and shall warrant to the City that its self-insurance meets the criteria defined in this Agreement. Further, the Company shall assume all liability for deficiencies in their self-insurance to the extent it fails to meet the terms outlined in this Agreement.

F. The Company shall require any contractors and subcontractors to obtain and maintain equivalent or greater coverage as required of the Company, and the Company shall have sole responsibility for determining the limits of coverage required to be obtained by contractors and subcontractors. The Company shall ensure that the City is an additional insured on each and every contractor and subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

Section 8. Modification. The terms and conditions of this Master Permit may be modified upon written agreement of the parties.

Section 9. Forfeiture and Revocation. If the Company willfully fails to comply with any provision of this Master Permit, or through willful misconduct or gross negligence fails to comply with any notice given the Company by the City under the provisions of this Master Permit, or if any of the provisions of LFPMC 5.26.090(D) apply, then this Master Permit may be revoked pursuant to LFPMC 5.26.090.

Section 10. Remedies to Enforce Compliance. In addition to any other remedy, the City may obtain a superior court order compelling the Company to comply with the provisions of this Ordinance and seek to recover damages and costs incurred by the City by reason of the Company's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under Section 9.

Section 11. City Ordinances and Regulations. This Master Permit shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this Master Permit, including any valid ordinance made in the exercise of its police powers. The City retains its authority to control by reasonable regulations the location, elevation, manner of construction, and maintenance of Company's telecommunications system in the public rights-of-way, and the Company shall conform with all such regulations, unless compliance would cause the Company to violate other requirements of law. In the event of a conflict between the provisions of this Master Permit and any other ordinance(s) enacted under the City's police power, such other ordinance(s) shall take precedence.

Section 12. Cost of Publication. The cost of the publication of this Ordinance shall be borne by the Company.

Section 13. Acceptance. Unless extended by Ordinance, the Company shall have sixty (60) days after the passage and approval of this Ordinance to file with the City Clerk its unconditional written acceptance of this Master Permit; otherwise, the Company shall be deemed to have rejected this Master Permit.

Section 14. Survival. Sections 5, Conditions governing use of public rights-of-way, and 6, Indemnification, shall be in addition to any and all other obligations and liabilities the Company may have to the City at common law, by statute, or by contract, and shall survive the City's Master Permit to the Company for the use of the City rights-of-way. This Ordinance is binding upon the successors and assigns of the Company and all privileges, as well as all obligations and liabilities of the Company shall inure to its successors and assigns.

Section 15. Assignment.

A. This Master Permit shall not be sold, leased, assigned, or otherwise alienated without the express consent of the City, and no rule of estoppel shall be invoked against the City in case the City shall assert the invalidity of any attempted transfer in violation of this section. The City agrees not to withhold consent where the Company demonstrates that the requested assignment is in the nature of a change of name or a change in the nature of a reorganization or merger of or with an entity controlled by, controlling, or under the common control of the Company, there being no other change in the resulting entity's ability to meet its master permit obligations hereunder. Such consent may be granted by the City Administrator and this Master Permit may be administratively amended to reflect any such changes without the need for further City Council action or amendments to the adopting Ordinance.

B. The City reserves the right to invoke any or all provisions of this master permit upon the Company's successors or assigns, judgment creditors, or distributors of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new master permit or license. This includes, but may not be limited to, requirements for filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this master permit and paying all direct costs to the City related to the transfer or assignment.

C. The Company shall not permit installations by others in the permitted areas, without written approval from the administrator. Such approval shall not be in lieu of a master permit or license or other requirements of the City. Whether or not permitted, the Company shall remain responsible for all third-party users permitted or allowed by the Company for compliance with this master permit. The intent of this provision is to require third parties, who might otherwise desire to use the Company's facilities, to also comply with applicable City requirements regarding master permits or right-of-way permits.

Section 16. Notice. Any notice, except a notice under Section 5.C.4, required or permitted by this Master Permit must be sent to the addresses specified below. This Master Permit may be administratively amended to update this contact information as needed without the need for City Council action or amendments to the adopting Ordinance.

CITY OF LAKE FOREST PARK
City Administrator
17425 Ballinger Way N.E.
Lake Forest Park, WA 98155

MCIMETRO ACCESS TRANSMISSION
SERVICES LLC
Attn: Franchise Manager
600 Hidden Ridge
Irving, TX 75038

Copy to:

Verizon Legal Department
Attn: Network Legal Team
1300 I Street, NW
5th Floor
Washington, DC 20005

Section 17. Venue and Jurisdiction. This Master Permit shall be construed in accordance with the laws of the State of Washington. Venue for any disputes arising out of this Master Permit shall be filed and adjudicated in either the United States District Court for the Western District of Washington or King County Superior Court.

Section 18. Work of Contractors and Subcontractors. The Company's contractors and subcontractors shall be licensed and bonded in accordance with state law and the City'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 the Company. The Company 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 the Company and shall ensure that all such work is performed in compliance with this Master Permit and applicable law.

Section 19. Term. The term of this Master Permit shall be as set forth in the Ordinance approving, renewing, or restating this Master Permit.

EXECUTED this ____ day of _____, 2022.

City of Lake Forest Park

**MCIMETRO ACCESS
TRANSMISSION SERVICES
CORP. D/B/A VERIZON ACCESS
TRANSMISSION SERVICES**

By: _____

By: _____

Title: _____

Title: Senior Manager – Network
Regulatory/Real Estate

Date: _____

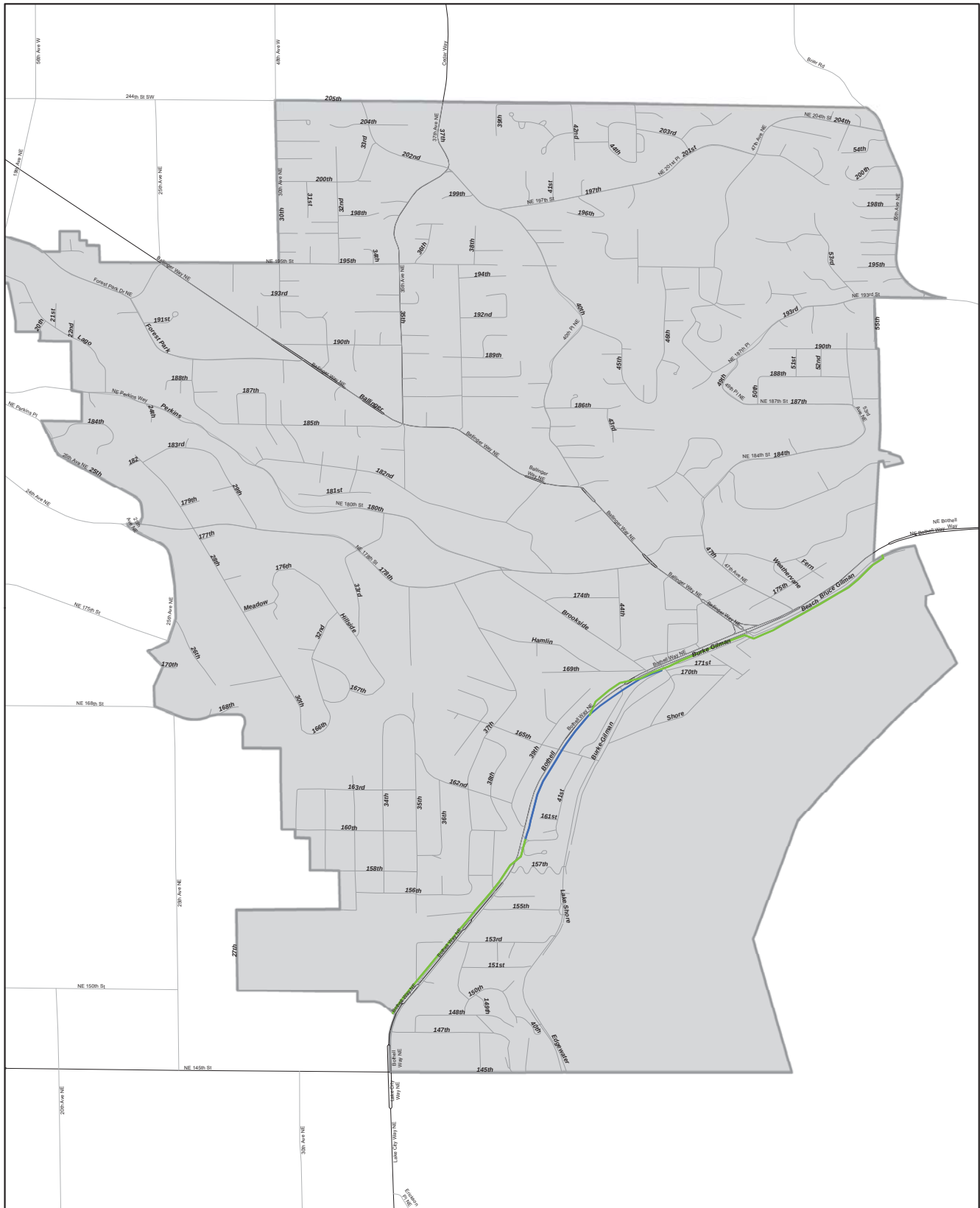
Date: _____

Approved as to Form:

Kim Adams Pratt, City Attorney

MCImetro Access Transmission Services LLC
Existing Fiber
City of Lake Forest Park, WA

Section 8, Item C.



- **Aerial - 19,467 LF**
- **Buried - 5,437 LF**
- Lake Forest Park**

Confidentiality Statement: Confidential and proprietary materials for authorized Verizon personnel and outside agencies only. Use, disclosure or distribution of this materials not permitted to any authorized persons or third parties except by written agreement.



Data Source: VZB
 Projection: GCS_WGS_1984
 Map Created: 5/18/2022
 Map Created By: Andres McDonnell



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	7/14/2022
Originating Department	Court
Contact Person	Pamela McConville
Title	Resolution 1850 – Interagency Reimbursement Agreement between Washington State Administrative Office of the Courts and Lake Forest Park Municipal Court for reimbursement costs related to the Blake decision.

Legislative History

- July 14, 2022, City Council Regular Meeting – Action

Attachments:

- Resolution 1850
- Interagency Agreement IAA23739

Executive Summary

This is an Interagency Reimbursement Agreement between the Administrative Office of the Courts (AOC) and Lake Forest Park (LFP) to access funds allotted to cities and municipal courts affected by the *State v. Blake* decision. Performance under this agreement would begin on July 1, 2022, and end on June 30, 2023.

Background

On February 25, 2021, the Washington State Supreme Court in *State v. Blake* declared Washington’s strict liability drug possession statute unconstitutional. Consequently, persons convicted in Washington State under RCW 69.50.4013(1) for possession of controlled substances may be eligible to have their conviction vacated and any fines, assessments, and fees paid refunded. AOC has set aside state funds, i.e., a legal financial aid pool, for this purpose.

LFP was awarded up to a maximum of \$82,841.00 in **reimbursement funds for legal and financial obligations** and up to a maximum of \$95,921.00 for extraordinary judicial, prosecutorial, or defense-related **costs of resentencing and vacating sentences** of defendants whose convictions or sentences are affected by *Blake*. We must, of course, follow the rules for reimbursement by the funding authorities. Per the contract, LFP is to submit a monthly A-19 invoice form and a data report with the required

documentation. AOC will reimburse approved requests within 30 days of receipt. The performance of this agreement would begin on July 1, 2022, and end on June 30, 2023. LFP must identify any funds not utilized or deemed needed by May 30, 2023, for reallocation.

Implementation:

Nearly a dozen King County Municipal Courts have concluded the best way to handle this process is to work with their Finance Department. Motions and orders will be processed by the court and submitted to Finance for payment. Once Finance receives the order and issues payment, LFP will seek reimbursement from AOC following the designated procedures.

Note:

The *Blake* decision implicates charges as far back as 1971. Our court records don't reach back to 1971 but, to date, we have identified more than 400 cases filed for these charges since 1995. It will be a labor-intensive process to research and review the numerous cases for appropriate action - to vacate, resentencing or reimburse legal financial obligations. Accepting AOC funds will underwrite the work that needs to be done to process these cases and provide financial reimbursement. It is important for the City to take full advantage of the funds being allotted to the City.

It is our recommendation for the Council to authorize this Interagency Reimbursement Agreement and participate in the AOC program.

Fiscal & Policy Implications

The budget actuals

The City may be reimbursed for costs incurred vacating convictions and refunding any fines, assessments, and fees paid as a result of the *State v. Blake* decision.

Alternatives

<i>Options</i>	<i>Results</i>
• Approve	City could receive reimbursement for costs incurred under <i>Blake</i> decision
• Deny	City could receive no reimbursement from the State and have to pay out of pocket the costs incurred under the <i>Blake</i> decision

Staff Recommendation

Approve Resolution 1850 authorizing the Mayor to sign the Interagency Reimbursement Agreement with the Washington State Administrative Office of the Courts.

RESOLUTION NO. 1850**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE INTERAGENCY REIMBURSEMENT AGREEMENT WITH THE WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS FOR REIMBURSEMENT COSTS OF RESENTENCING AND VACATING SENTENCES UNDER THE BLAKE DECISION.**

WHEREAS, the City of Lake Forest Park Municipal Court will incur additional costs related to the extraordinary expense of resentencing and vacating sentences under the *State v. Blake* decision and for the costs of refunding legal financial obligations; and

WHEREAS, the Washington State Administrative Office of Courts will provide reimbursement of costs to the City of Lake Forest Park related to expenses resulting from the *Blake* decision; and

WHEREAS, the City of Lake Forest Park and the Washington State Administrative Office of the Courts have negotiated the Interagency Reimbursement Agreement providing for such reimbursement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Lake Forest Park, as follows:

Section 1. AUTHORIZATION. The Mayor is authorized to sign the Interagency Reimbursement Agreement with the Washington State Administrative Office of the Courts attached hereto as Exhibit A for the purpose of reimbursing Lake Forest Park for extraordinary costs of resentencing and vacating sentences under the *Blake* decision and for the costs of refunding legal financial obligations under the *Blake* decision.

Section 2. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

PASSED BY A MAJORITY VOTE of the members of the Lake Forest Park City Council this 14th day of July, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matthew McLean
City Clerk

FILED WITH THE CITY CLERK: July 7, 2022
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.:

INTERAGENCY REIMBURSEMENT AGREEMENT IAA23739
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
LAKE FOREST PARK

THIS REIMBURSEMENT AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and LAKE FOREST PARK, for the purpose of reimbursing LAKE FOREST PARK (City) for extraordinary costs of resentencing and vacating sentences under *Blake* and for the cost of refunding legal financial obligations (LFOs) under the *Blake* decision.

1. PURPOSE

The purpose of this Agreement is to provide reimbursements to assist Cities and Municipal Courts with extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences in are affected by the *State v. Blake* decision, and to provide reimbursements to assist Cities and Municipal Courts who have reimbursed or will reimburse LFOs to defendants whose convictions or sentences in Municipal Court are affected by the *State v. Blake* decision.

2. REIMBURSEMENT

- A. Extraordinary Expenses Reimbursement. AOC shall reimburse the City up to a maximum of 95,921 for extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision incurred during the period of February 25, 2021 to June 30, 2023. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2023, and any reimbursement requests in excess of this amount will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by agreement of the parties.
- B. LFO Reimbursement. AOC will reimburse the City up to a maximum of 82,841 for payments made by the City during the period February 25, 2021 to June 30, 2023 pursuant to court order which required reimbursement by the State of Washington of legal and financial obligations. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2023, and any reimbursement requests in excess of this amount stated in this Section 2 (b) will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by

agreement of the parties. Nothing in this Agreement requires the City to make payments pursuant to a court order when the funds available for reimbursement are less than the amount of the payment.

- C. General. AOC shall provide reimbursement to the City for approved and completed reimbursements by warrant or account transfer within 30 days of receipt of a properly completed A-19 invoice and the completed data report as required below.

3. PERIOD OF PERFORMANCE

Performance under this Agreement begins **July 1, 2022**, regardless of the date of execution, and ends on **June 30, 2023**. The period of performance may be amended by mutual agreement of the parties if the Legislature provides additional funding or time for these purposes.

4. TERMS OF REIMBURSEMENT

a) The City shall request reimbursement as follows:

1. The City will submit its A-19 invoices monthly to payables@courts.wa.gov. A-19 invoices submitted under this agreement must include:
 - a. Payment documents from the City indicating the amounts expended, the recipients, and the date of expenditure.
 - b. Sufficient information to allow AOC to determine that the costs reimbursed are extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake*.
 - c. Proper coding for expenses under both 2.A. and B. For LAKE FOREST PARK expenses under 2.A. must be coded **40021070**, and reimbursement under 2.B. must be coded **40022090**.
2. The City shall provide a monthly report to AOC that must contain at a minimum:
 - a. A list of any case numbers associated with the services provided;
 - b. A breakdown of expenses by judicial, prosecutorial, and defense-related costs;
 - c. The amount of LFOs reimbursed, with the case number associated with that amount.
 - d. Any positions supported by these funds, broken down by judicial, prosecutorial, and defense-related positions; and
 - e. Data, including case numbers and aggregate data on the number and type of cases:
 - i. Vacated under *Blake*;

- ii. Resentenced under *Blake*; and
- iii. Being worked on under *Blake*.

- b) By May 1, 2023, the City agrees to report any allocated funds under either 2. A. or B. that it will be unable to spend during the term of the contract, or any additional funds it anticipates needing during the term of the contract should additional funds become available. AOC reserves the right to reallocate funds that are reported to be unable to be spent.

5. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by agreement of the parties. Such amendments are not binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement must be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency will be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. This Agreement; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

7. WAIVER

A failure by either party to exercise its rights under this Agreement does not preclude that party from subsequent exercise of such rights and is not a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

8. SEVERABILITY

If any provision of this Agreement, or any provision of any document incorporated by reference is held invalid, such invalidity does not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

9. AGREEMENT MANAGEMENT

The program managers noted below are responsible for and are the contact people for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	City Program Manager
Christopher Stanley Chief Financial and Management Officer PO Box 41170 Olympia, WA 98504-1170 christopher.stanley@courts.wa.gov (360) 357-2406	LAKE FOREST PARK Court Administrator 17425 Ballinger Way NE Lake Forest Park, WA 98155 omconville@ci.lake-forest-park.wa.us 206-364-7711

10. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement are considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:**Administrative Office of the Courts****LAKE FOREST PARK**

Signature

Date

Signature

Date

Name
LAKE FOREST PARK

Name

Title

Title

STATE OF WASHINGTON

A 19-1A
(Rev. 5/91)



INVOICE VOUCHER

AGENCY USE ONLY

Section 9, Item A.

AGENCY NO.

LOCATION CODE

P.R. OR AUTH. NO.

AGENCY NAME

Office of the Administrator for the Courts

VENDOR OR CLAIMANT (Warrant is to be payable to)

INSTRUCTIONS TO VENDOR OR CLAIMANT: *Submit this form to claim payment for materials, merchandise or services. Show complete detail for each item.*

Vendor's Certificate: I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.

BY

(SIGN IN INK)

(TITLE)

(DATE)

FEDERAL I.D. NO. OR SOCIAL SECURITY NO. (For reporting Personal Services Contract Payments to I.R.S.)
Do not fill in. Attach a W-9 form

RECEIVED BY

DATE RECEIVED

[illegible]

PREPARED BY

TELEPHONE NUMBER

DATE _____

AGENCY APPROVAL

DATE _____

DOC. DATE

PMT DUE DATE

CURRENT DOC. NO.

REF DOC.

VENDOR NUMBER	
---------------	--

VENDOR MESSAGE

UBI NUMBER

[illegible]

ACCOUNTING APPROVAL FOR PAYMENT

DATE _____

WARRANT TOTAL	
---------------	--

WARRANT NUMBER

IAA23739

134



CITY OF LAKE FOREST PARK

CITY COUNCIL

AGENDA COVER SHEET

Meeting Date	July 14, 2022
Originating Department	Executive
Contact Person	Phillip Hill, City Administrator
Title	Resolution Number 1851 – Memorandum of Understanding regarding Municipal Court Security

Legislative History

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|-----------------------|--|
| • First Presentation | City Council Regular Meeting – June 23, 2022 |
| • Second Presentation | City Council Regular Meeting – July 14, 2022 |
| • Action | City Council Regular Meeting – July 14, 2022 |

Attachments:

1. Resolution 1851
2. Draft Memorandum of Understanding (“MOU”) with the Lake Forest Park Police Guild
3. Minimum requirements for court security

Executive Summary

The Lake Forest Park Municipal Court has for many years contracted with a private company to provide security on court days and during jury trials. During the last two years of the pandemic all court days have been held remotely and there were no jury trials. As the City worked to move to hybrid meetings, the Court’s needs were addressed to provide for a hybrid Court presence as well. The result is that in person court days will be limited to 4 hours, two days per week.

Due to such limited hours and the infrequency and short notice of jury trials, the current security company is no longer able to provide these services. A total of six (6) security firms were contacted by the court, only one is able to provide service at \$79 per hour.

Background

The company able to provide security services for the Court employs retired and off duty officers. Because the quoted rate of \$79 per hour is a significant increase over the \$45 per hour quoted by the past firm, and considering that they employ retired and off duty officers, Chief Harden suggested exploring the possibility of providing this service through the City’s own off duty officers. With the recent adoption of the 2022 – 2024 Police Guild Collective Bargaining Agreement an average overtime rate effective July 1, 2022, was calculated at roughly \$70 per hour.

As sworn officers, utilizing the city’s off duty officers ensures that security is being provided by individuals that meet or exceed the requirements necessary to provide the services of court security. Attached is a copy of the minimum requirements for this position if hired as a city employee.

The approach of hiring internally to provide security was considered, however, the cost for one employee at an assumed \$30 per hour plus benefits would run roughly \$18,000 per year and poses operational issues in the event of illness and time off. In addition, at 8 hours per week the position is not overly attractive to potential candidates and would be difficult to fill in a tight labor market.

A Memorandum of Understanding (MOU) with the Guild will be necessary to identify how this overtime will be scheduled and that the City maintains its management right respective to hours and scheduling and may terminate providing court security with notice. A draft MOU is attached.

Fiscal & Policy Implications

The rate charged prior to the pandemic was \$20 per hour, that same company has quoted \$45 per hour but due to the limited hours is unable to provide the services. The company able to provide services charges \$79 per hour and the city’s own police department would average \$70 per hour. The table below compares the three rates.

	Pre-pandemic	Post pandemic	LFP Officer
	\$20 per hour	\$79 per hour	\$70 per hour
Annual cost	\$19,000 (actual)	\$33,000 (estimated)	\$29,000 (estimated)

Alternatives

Options	Results
Utilize the city’s police officers to provide the service	Court security is provided by the city’s sworn police officers who meet or exceed the minimum requirements for the position and provides them with an opportunity for additional hours
Contract with an outside firm to provide the service	Court security is provided by sworn police officers, at a higher rate, who meet or exceed the minimum requirements for the position but are either retired or come from other jurisdictions

Staff Recommendation

Adopt Resolution Number 1851 authorizing the Mayor to sign an MOU with the Police Guild to provide Court Security.

RESOLUTION NO. 1851

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LAKE FOREST PARK, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN THE
MEMORADUM OF UNDERSTANDING BETWEEN THE
POLICE GUILD AND THE CITY FOR THE PURPOSES
OF PROVIDING COURT SECURITY**

WHEREAS, the Police Guild has agreed to a Memorandum of Understanding (“MOU”) to amend the Agreement between the City of Lake Forest Park and Police Guild to memorialize overtime opportunities related to providing security for the Lake Forest Park Municipal Court; and

WHEREAS, the Police Guild has agreed in this MOU that Court will provide overtime opportunities for Guild Members to fill the role of court security at the Lake Forest Park Municipal Court; and

WHEREAS, security at the Court is necessary to protect the citizens of Lake Forest Park, Lake Forest Park Employees, and those attending court for various matters.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Forest Park, as follows:

Section 1. MEMORANDUM OF UNDERSTANDING AUTHORIZED. The City Council of the City of Lake Forest Park authorizes the Mayor to sign the Memorandum of Understanding by and between the City of Lake Forest Park and the Lake Forest Park Police Guild attached hereto as Exhibit A.

Section 2. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

PASSED BY A MAJORITY VOTE of the Lake Forest Park City Council this 14th day of July, 2022.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:

Matt McLean
City Clerk

FILED WITH THE CITY CLERK: July 7, 2022
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.:

Memorandum of Understanding

(Lake Forest Park Municipal Court Security)

The purpose of this Memorandum of Understanding (“MOU”) between the Lake Forest Park Police Guild (the “Guild”), and the City of Lake Forest Park (the “City”), collectively the “parties”, is to memorialize overtime opportunities for the Lake Forest Park Municipal Court (the “Court”).

I. Recitals

A. The Court has not secured full time court security through other means and will be returning to in person court proceedings beginning July 1st, 2022, necessitating a need to establish court security personnel;

B. Security at the Court is necessary to protect the citizens of Lake Forest Park, Lake Forest Park Employees, and those attending court for various matters;

C. Therefore, the City and the Guild find it beneficial to provide court security services to the Court under the following terms and conditions.

II. Agreement

Now, therefore, the parties agree as follows:

1. The Court will provide overtime opportunities for Guild Members (“Members”) to fill the role of court security at the Lake Forest Park Municipal Court (“Court Security Shifts”). If Members are unable to fulfill the needed Court Security Shifts, then the Court may contact outside ~~entities~~ agencies for assistance with the coverage.

2. Compensation for filling a Court Security Shift will be at the officer’s current overtime rate as delineated within the current Collective Bargaining Agreement (“CBA”) and paid through the existing City payroll system and schedule.

3. Court Security Shift availability will be provided to officers as described in section 5. The overtime selection process outlined in the CBA will not be utilized for filling Court Security Shifts. These shifts will be available to officers on a first come, first serve, basis.

4. A member is responsible for the Court Security Shift that they elect to fill. Members are obligated to the shift and will be responsible for filling that shift. If an unforeseeable scheduling conflict should arise, the Member is responsible for finding another member to take their Court Security Shift. Once a member selects a specific shift, they cannot back out of the commitment for a more desirable overtime shift.

5. The availability of Court Security Shifts will be posted month by month by the Operations Lieutenant. Members are discouraged from signing up for all available shifts without properly consulting their calendars or schedules. Members should be respectful to other Members and afford them the opportunity to take Court Security Shifts prior to selecting multiple shifts during any given month. Patrol operations is a priority and Members cannot take time off to fill Court Security Shifts when there is minimum coverage of patrol

officers. On duty Detectives and Traffic Officers may not be considered as available coverage for patrol officers filling Court Security Shifts. Members shall not create patrol overtime for other Members by taking a Court Security Shift.

6. If the Court Security Shifts cannot be filled by the Guild, the Court has the authority to pursue outside ~~entities~~agencies to fill the positions.

7. Per Article 3 of the CBA, the City has the management right to terminate this MOU with notice and it cannot be used as bargaining right.

8. The Chief of Police or designee has the right to not allow a specific unit or Member (i.e.. K9, Traffic, Detectives) to perform this detail if it causes staffing or other related patrol issues.

9. The Court is ultimately responsible for the security of the courtroom and is responsible for coverage if the Guild is unable to fill the designated security position.

10. The Chief of Police or designee has the right to pull the off-duty officer from this detail in the event of a major emergency or staffing issue.

11. This MOU will expire on the effective date of a successor Agreement. or as otherwise terminated.

CITY OF LAKE FOREST PARK

LAKE FOREST PARK POLICE GUILD

Jeff Johnson
Mayor of Lake Forest Park

Date

Jerome Walker
Guild President

Date

City of Lake Forest
COURT SCREENER
 Regular, Part Time

Nature of Work:

Under the direction of the Judge and Court Administrator, the screener will perform weapons and contraband screening upon entry to the court room. The Court Screener acts as the court's liaison with defendants, jurors, attorneys, and the public, to ensure the efficient and secure operation of the court.

Job Duties and Responsibilities:

- Operate an electronic walk-through metal detector and handheld screening device to determine if persons entering public buildings are carrying or wearing weapons or other prohibited items. Screen all individuals, without exception, when they enter the court area facility. *
- Perform hand searches of bags, briefcases, and other carry-in items to identify illegal items. *
- Refuse entry into buildings if necessary to protect the public health, welfare, or safety. *
- Identify individuals who may be loitering or disturbing the peace or who have no lawful business to conduct in the building. *
- Observe courtroom proceedings and radio police dispatch if needed. *
- Observe courtroom, lobbies, hallways, bathrooms, and other areas to discourage unacceptable and unlawful behavior in and around assigned areas. *
- Contact and cooperate with other law enforcement agencies in matters relating to the apprehension of offenders or emergency situations*
- Notify emergency personnel in medical situations*
- Conduct scheduled and random security inspections of the courtroom, bathrooms, lobbies, and hallways*
- While on duty carry a police radio. *
- Be aware of security zones; facility boundary, facility exterior, areas open to the public, and restricted employee areas. *
- Notify court staff of suspicious or irregular actions by litigants. *
- Provide information, direction, and assistance to the public. *
- Assist with building evacuation. *
- Maintain an orderly and clean working office space. *
- Perform related duties as assigned. *

* = Essential Job Functions

Minimum Qualifications:

Necessary Knowledge, Skills, and Abilities:

- Knowledge of courtroom procedures and process.
- Understand the importance of confidentiality with regards to duties.
- Ability to communicate clearly and efficiently in person or by telephone.
- Ability to cope with situations firmly, tactfully and with respect to individual's rights.
- Ability to analyze situations quickly and objectively, recognizing actual and potential dangers and determine a proper course of action.
- Demonstrate ability to positively interact with diverse individuals to accomplish a common goal in high-pressure situations.
- Display a pleasant and professional demeanor.
- Physical ability to perform essential job functions.

Working conditions/Physical Demands:

- Work is performed in a courtroom environment.
- Requires dexterity of hands and fingers to operate court security equipment.
- Hearing and speaking to exchange information.
- Analyze potentially dangerous situations.
- May be exposed to bloodborne and/or airborne pathogens.
- Contact with dissatisfied or abusive individuals.

Education/Experience:

- High school diploma or GED and three (3) years' work experience in security/law enforcement
- Scope of experience must include proactive intervention to defuse interpersonal conflicts and maintaining orderly conduct in public group situations.

Special Requirements:

- Valid Washington Driver's License.
- Successful completion of thorough pre-employment background check.
- Blood borne pathogen, First Aid and CPR certification within six months of employment.
- Ability to maintain First Aid card.
- Ability to maintain CPR card.
- Ability to maintain Blood borne pathogen certifications.

Equipment:

- Responsible for ordering of equipment and/or uniforms as required.
- Responsible for moving scanner.

Selection Guide:

May include: Formal application, resume, letter of interest, review of education and experience, written response to structured questionnaire, oral interview, credit history check, criminal background check, personal reference check, work reference check.

These examples are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

Updated 5/06/2022.

Training

1. Must attend training for First-aid/cpr/aed within 3 months of hire.
2. Must attend training for Bloodborne Pathogens, Haz Mat. (training may be through Local Gov. <https://localgovu.com/wcia/>)
3. Attend any authorized training through the police department on de-escalation and tactics on dealing with irate and aggressive persons or through online training courses.
4. Training on proper of the handheld wand, through hand-on course.
5. Attend training on security protocols, which include viewing a person's property and requesting to view the contents.
6. Appropriate questions.
7. Training on logbook procedures when and how to have an Officer not in uniform sign into the logbook.
8. Attend training on the proper use of the Police Radio.
9. Training on the proper response to emergency situation (i.e.active shooter, assaults, natural disasters, etc.)

City Administrator Report City of Lake Forest Park

Date: July 14, 2022

TO: Honorable Deputy Mayor and Councilmembers

FR: Phillip Hill, City Administrator

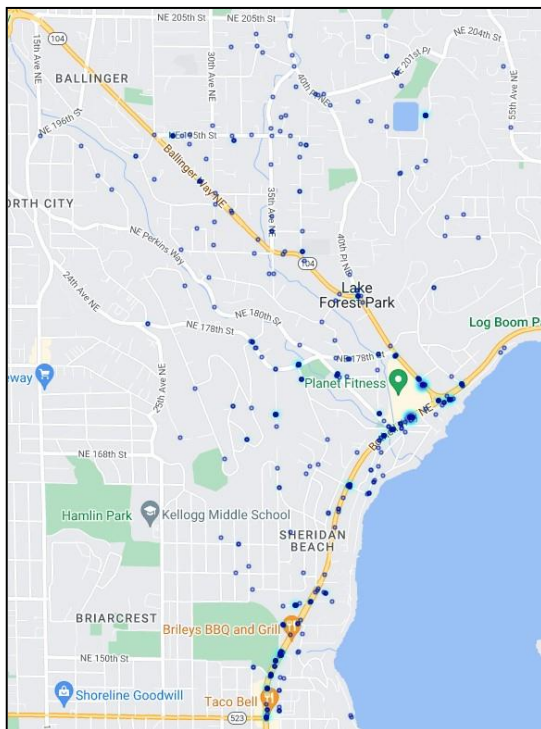
CC: Honorable Mayor Jeff Johnson
Leadership Team

The City Administrator Report is meant to provide the council, staff and community an update on the activities of the City and on issues that concern the City. This memo will be provided in each Council packet and is divided into key sections.

Please let me know if you have any questions or need additional information about any of the following items and please feel free to contact any of the department heads for additional information.

I. Intergovernmental and local issues update.

Police Department



Police incidents heatmap for

June 2022:

Each blue dot is an incident generated by dispatch or an officer. This map represents **836** incidents in **June**.

Notable Calls/Incidents:

Type	Calls
Suspicious Circumstances	56
Extra Patrols	51
Citizen Contacts	29
Thefts	21
Parking	17
Disturbances	13
Alarms	13
Traffic Accidents	12

Notable Incidents

Officers responded to a high-speed one vehicle collision in the 4500 blk of NE 201st Pl. The vehicle went airborne and collided with a tree. The passenger was later transported to the hospital, and it was determined that multiple properties had been damaged.



Officers responded to an in-progress vehicle prowling in the Town Center parking lot. The suspect was quickly located by the responding officers and detained. The victim was then contacted at a local business and confirmed the suspect had unlawfully entered the vehicle and stolen items. A search of the suspect post-arrest located the items stolen from the victim's vehicle, as well as drug paraphernalia.

Following 911 calls by astute citizens, officers were able to swiftly make an arrest of a repeat burglary suspect. During the contact with the suspect, the suspect confessed to unlawfully entering the home. We're extremely grateful for the assistance from the citizens we serve.



Training

In June, the Lake Forest Park Police Department conducted the second of four annual department-wide training sessions. The training was based on simulated real-life scenarios and incorporated recent legislative changes to officer responses to calls. During the training day, officers were subjected to numerous high-stress mock scenarios covering the following topics:

- Crisis Intervention and De-Escalation
- Defensive Tactics
- First Aid/tactical Medicine Applications.



Officers also participated in emergency vehicle operations training (commonly called EVOC), which was hosted by the King County Coalition of Small Police Agencies in Issaquah. This year's training focused on driving scenarios common to collisions involving police vehicles.



Coming Up...

This month the Lake Forest Park Police Department is hosting a Safety Day in the parking lot behind City Hall on July 16 (10 a.m. to 3 PM). The focus of this event is bicycle and water safety, and will feature the Northshore Fire Department, King County Search and Rescue, King County Marine/Dive Unit, and attractions for kids and families. The PD will also be giving away bicycle helmets, personal flotation devices, and gun locks.

Summer SAFETY DAY 2022

SATURDAY JULY 16TH
10AM-3PM | PARKING LOT NEXT TO POLICE DEPARTMENT

Featuring:

- King County Search And Rescue (SAR)
- King County Sheriff's Office Marine Unit
- Shoreline Fire Department
- Civilian Emergency Response Team (CERT)
- Amateur Radio Emergency Communications (RACES)
- LFPPD Dunk Tank
- Refreshments will be provided

Free
GUN LOCKS *Project ChildSafe*

HELMETS

LIFE JACKETS

SPONSORED BY:

  Lake Forest Park Police Guild 

Public Works Department

Road closures occurred on 193rd ST NE to address storm damaged trees and to proactively removed a dead tree.



ADA compliant ramps are installed throughout the city. The improvements below are at NE 160th Street and 37th Avenue. A total of 11 ramps were improved.

Before



Street View

Aerial View

After



East Ramp

West Ramp

II. Internal City Information**III. Council Information****IV. Response to Citizen and Council Comments****V. Contract Reporting**

Three contracts were approved administratively: term extension letter for Transpo Group for consultant traffic engineering services; King County for continued placement of the ballot box outside city hall; and Avocette Technologies service contract for Accela building permit software.

VI. Legislative Update**VII. Community Events****VIII. Upcoming City Sponsored Events**

[FREE Yoga Summer Stretch Series - Hosted by the City and the LFP Parks & Recreation Advisory Board!](#)

July 16, 2022, 9:00 AM - 10:00 AM @ Pfingst Animal Acres Park

[Safety Day for Kids](#)

July 16, 2022, 10:00 AM - 3:00 PM @ City Hall

[FREE Yoga Summer Stretch Series - Hosted by the City and the LFP Parks & Recreation Advisory Board!](#)

July 23, 2022, 9:00 AM - 10:00 AM @ Pfingst Animal Acres Park

IX. Meetings Calendar

[City Council Budget & Finance Committee Meeting \(hybrid meeting\)](#)

July 21, 2022, 6:00 PM - 7:30 PM @ City Hall and via Zoom

[City Council Committee of the Whole Meeting \(hybrid meeting\)](#)

July 25, 2022, 6:00 PM - 7:30 PM @ City Hall and via Zoom

[Parks and Recreation Advisory Board Meeting \(hybrid meeting\)](#)

July 27, 2022, 7:00 PM - 8:30 PM @ City Hall and via Zoom

City Council Special Work Session (hybrid meeting)

July 28, 2022, 6:00 PM - 7:00 PM @ City Hall and via Zoom

City Council Regular Business Meeting (hybrid meeting)

July 28, 2022, 7:00 PM - 9:00 PM @ City Hall and via Zoom