ABERDEEN CITY COUNCIL

February 26, 2020

COUNCIL MEETING AGENDA

7:15 PM – 3rd Floor, City Hall

COMMITTEE OF THE WHOLE

A. Guest Speakers
B. Department Heads
C. Mayor's Report
D. Non-Standing Committee Reports

COUNCIL MEETING

I. ROLL CALL

II. FLAG SALUTE

III. APPROVAL OF MINUTES

IV. ADDITIONS / DELETIONS

V. PUBLIC COMMENT Re: Agenda Action Items (Indicated by AI) (Please limit your comments to 3 minutes)

VI. FINANCE COMMITTEE

A. Committee Chair Report

B. Approval of expenditures

1. Recommend approval of expenditures and payroll.

C. Public Hearings

D. Reports & Communications

1. (AI) Report from Finance and the Parks Director recommending that the City Council authorize the Mayor to sign the agreement with National Event Pros for the Splash inflatable rides in the amount of $4,330.11.
2. (AI) Report from Finance and the Parks Director recommending that the City Council authorize the Mayor to sign the Production Agreement with Pyro Spectaculars North, Inc. for the Splash Firework show in the amount of $12,700.00.
3. (AI) Report from Finance and the Parks Director recommending that the City Council authorize the Finance Director to transfer $77,031 from Fund 102 to Fund 320.

E. Resolutions

F. Ordinances

1. Second reading and public hearing of Bill No. 20-01 an ordinance relating to Business License and Regulations, amending Aberdeen Municipal Code 5.03 and 5.07 pursuant to State Law.

VII. PUBLIC WORKS

A. Committee Chair Report

B. Reports & Communication

1. (AI) Report from Public Works and the Public Works Director recommending that the Public Works Committee and the City Council declare the 6" Trash Pump as surplus and authorize Equipment Rental to sell the parts/equipment at auction.
2. (AI) Report from Public Works and the Public Works Director recommending that the City Council shall pass a resolution setting March 11, 2020 as the date for the public hearing to receive comments on the 2020 Stormwater Management Plan.
3. (AI) Report from Public Works and the Public Works Director recommending that the Public Works Committee and the City Council authorize the Mayor to sign Amendment No. 2 to RCO agreement #18-1214.
4. (AI) Report from Public Works and the Public Works Director recommending that the City Council shall pass a resolution approving the Transportation Benefit District 2020 Annual Project Plan.
5. (AI) Report from Public Works and the Community Development Director recommending that the City Council authorize the Mayor to sign a contract with K D & S Environmental for the demolition and abatement of a nuisance property at 217 E. Holman for an amount not to exceed $33,768.30.

C. Resolutions

1. (AI) A Resolution approving the Annual Project Plan for the Transportation Benefit District for the year 2020.
2. (AI) A Resolution setting the date for a public hearing on the Annual Project Plan for the 2020 Stormwater Management Plan.

D. Ordinances

VIII. PUBLIC SAFETY

A. Committee Chair Report

B. Reports & Communications

IX. SPECIAL AGENDA ITEMS

A. Reports & Communication

1. (AI) Report from Personnel and the Public Works Director recommending that the City Council adopt the recommendation for Joel Greene to start at Assistant City Electrician with a salary Range of 20, Step 5 upon his hire.
2. (AI) Report from Personnel and the Public Works Director recommending that the City Council authorize the Human Resources Director and Public Works Director to publicize and hire an Engineer III, or create and hire a Project Manager for the 2020 budget year.
3. (AI) Report from Personnel and the Fire Chief recommending that the City Council adopt the proposed job description and create the job classification for Fire Service Specialist effective immediately.
4. (AI) Report from Personnel and the Police Chief recommending that the City Council adopt the revisions to the Police Lieutenant and Police Sergeant positions effective immediately.

B. Proclamation

C. Resolutions

D. Ordinances

E. Appointments

X. PUBLIC COMMENT PERIOD (Please limit your comments to 3 minutes)

XI. CITY COUNCIL COMMENT PERIOD

XII. EXECUTIVE SESSION

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Human Resources Department at 360-537-3207, 48 hours in advance of the meeting. Thank you.

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CITY OF ABERDEEN
LEGISLATIVE DEPARTMENT

Mr. Mayor: Hon. Pete Schave

The Members of
Your Committee On: **Finance Committee and the Parks Director**

In Reference To: **Splash 2020**

Reports and recommendations as follows:
The City of Aberdeen, Parks Department, has a contract from National Event Pros to provide and staff large interactive inflatables at the Splash Festival on July 4, 2020. The $4,330.11 contract provides for the equipment, staff, travel, and being named as an additional insured.

The parks department continues to raise funds through local sponsorships. The signed contract is due asap to reserve the rides.

National Event Pros has provided staff and inflatables for the past several years.

***Recommend as follows*:**
It is recommended that the City Council authorize the Mayor to sign the agreement with National Event Pros for the Splash inflatable rides in the amount of $4,330.11.

Stacie Barnum, Parks Director

Debbie Ross, Chair

Kati Kachman, Vice Chair

Reported: February 26, 2020

John Maki

Adopted: _____

Dee Anne Shaw

FINANCE COMMITTEE REPORT

National Event Pros
PO Box 6177. Kent, WA 98064
Phone: (206)763-3236
Fax: (253)872-2904
nationaleventpros.com (https://nationaleventpros.com/)
info@nationaleventpros.com

Invoice No: 6282145
Order Date: 2/14/2020
Event Planner: Paul Jensen

Client Information

City of Aberdeen
Doug Farmer
200 East Market St
Aberdeen, WA 98520
Home Phone:
Work Phone: (360) 537-3230
Cell Phone: (360) 581-1556

Event Information

4th of July City event
City Park
1401 Sargent Blvd
Aberdeen, WA 98520 **Event Date/Time:**
Sat, Jul 4, 2020 12:00pm -
Sat, Jul 4, 2020 5:00pm

Surface type: Grass - Allow Stakes
Delivery Method: Fully Staffed

Name	Qty	Total
Additional Insured Certificate	1	$75.00
Sports Arena Obstacle Course	1	$650.00
- NEP Event Staff	1	$250.00
UnderSea 5 in 1 Combo	1	$350.00
- NEP Event Staff	1	$250.00
24' Modular Dual Lane Slide #1	1	$800.00
- NEP Event Staff	1	$250.00
24' Rockwall (4 Station) #2	1	$1,050.00
- NEP Event Staff (Required)	2	$0.00
Chair Rental - Black Plastic Folding	2	$0.00
Generator 8000W (w/GFCI)	1	$125.00
Generator 3000W (Inverted)	1	$100.00

Equipment Total		$3,900.00
Delivery Fees	T	$400.00
Discount	T	$-226.69
SubTotal		$4,073.31
Sales Tax	8.980%	$365.78
Total		**$4,439.09**
Amount Paid		$0.00
Balance Due		**$4,439.09**

Additional Notes:

2 vehicles for equipment & staff.

Lessee will:

1. Provide _4_ 110volt/20amp electric circuits and 10/12 gauge cords for distances over 50ft.
2. Provide any required entrance and parking passes.
3. Provide a minimum of _0_ adult volunteer(s) to operate the activities.

NATIONAL EVENT PROS STANDARD TERMS AND CONDITIONS

Invoice #6282145

Thank you for choosing National Event Pros. Unless modified by mutual written agreement these Terms and Conditions are an integral part of our proposal and apply to all Attraction Equipment, Performers and Services provided to you by 71 Productions, Inc. DBA National Event Pros (referred to below as "National Event Pros" or "we"). We ask that you review the Invoice, these Terms and Conditions and any Supplemental Terms provided and raise any questions prior to accepting your proposals.

1. Proposal; Payment. The accompanying Invoice sets forth our proposal for the Attraction Equipment, Performers and Services ("Attractions") National Event Pros will provide for your event. Acceptance of the proposal requires your signature confirming the terms in the Invoice (including these Terms and Conditions) and your payment of the deposit listed in the Invoice. Proposals remain valid for 10 working days, though no specific Attraction will be reserved until we receive a signed Invoice and the deposit from you. Unless other terms are stated on the Invoice, the balance due must be paid prior to the start of your event.

2. Cancellation. Any cancellations must be in writing and are subject to the terms below. Please note, for December bookings, special cancellation conditions apply.

Notice of Cancellation	January - November	December
21 or more days prior to the event date	Deposit forfeited	Deposit forfeited PLUS 50% of invoice price is owed (less deposit)
Less than 21 days, but more than 72 hours prior to the event date	Deposit forfeited PLUS 50% of invoice price is owed (less deposit)	Total invoice amount is due.
Less than 72 hours prior to the event date	Total invoice amount is due.	Total invoice amount is due.

3. Inclement Weather Policy. In the event of heavy rain and/or strong winds such that use of the Attraction equipment or other event services are deemed unsafe by National Event Pros, we may elect to cancel our services or temporarily suspend Attractions. If you anticipate that inclement weather may require your event to be cancelled, please call the National Event Pros at 206-763-3236 by 9:00 AM on the day of your event. National Event Pros will determine whether local weather conditions require cancellation of our services, and if so determined, will credit your account for the total Invoice price, to be used within one year of the cancelled event, minus a $75 per Attraction equipment unit restocking fee. Excluded items include (but not limited to: Tents, Tables, Chairs, Mechanical Rides, & performers. Otherwise, the cancellation provisions of paragraph 2, above, will apply. National Event Pros strongly recommends that you plan for an alternate, indoor location for any Attractions to avoid interruption of your event.

4. Site Owner Permission; Insurance. You confirm you have all necessary permits and permission from the City, County and/or other property owner ("Site Owner") to present and/or use National Event Pros' services and equipment at the address of your event, and that all Site Owner requirements as to its use have been met. National Event Pros carries a $6 million/$5 million insurance policy. Proof of Insurance can be added at no additional costs; a $75.00 additional fee is required to have you or the Site Owner named as an Additional Insured. Please contact National Event Pros to make this request at least 21 days prior to your event.

5. Site Requirements. Your Invoice proposal and the Site Requirements Rider set out specific space, electrical and other site requirements for your event location. Please review the Invoice and Site Requirements Rider carefully and address any questions to National Event Pros at least 21 days prior to your event. It is your responsibility to ensure that the site is adequate for National Event Pros' Attraction equipment and services. For your guests' safety, the area should be level, free of rocks and any objects or debris which may interfere with the use of or cause damage to any Attraction equipment. Grass or cement is recommended; dirt, mud, gravel and beauty bark are not allowable surfaces. If, on the day of your event, the Invoice specifications are not met for a particular Attraction, National Event Pros reserves the right, in its sole discretion, to refuse to set up or to suspend the operation of that Attraction, and no refund will be given.

6. Staffing & Supervision. If staffing of your event is included in your Invoice proposal, then National Event Pros will perform all required setup of Attractions, supervision of Attractions during your event, and teardown of the Attractions at the end of your event. National Event Pros reserves full discretion as to the number, age, height or weight of participant(s) in any Attraction to maintain the safe use of the equipment.

7. Self-Staffing. If you elect to be responsible for setup, supervision, operation and teardown of the Attraction equipment, you must provide your own paid or volunteer staff for this service. The number of staff you must provide is listed in your Invoice proposal. These staff must be present and available upon delivery of your equipment and remain for the full tear-down time following your event. If adequate staff is not present and available, you will either be charged $75 per Attraction for National Event Pros staff, or the Attraction(s) will be suspended until adequate staff is available.

8. General Release/Indemnity/Hold Harmless. Each party shall defend, protect, and hold harmless the other, or any employee thereof from and against all claims, suits, and actions arising from any allegedly negligent act or omission or conduct of the other or any employees or agents of either while performing under the terms of this Agreement.

9. Choice of Law; Venue; Attorney's Fees. These Standard Terms & Conditions and all proposals, invoices and other forms used by National Event Pros shall be governed by and construed in accordance with the laws of the State of Washington; the parties hereby consent to exercise of exclusive venue and jurisdiction for any lawsuit relating to this agreement shall be in Grays Harbor County, Washington. In the event any suit, action or other legal proceeding shall be instituted to declare or enforce any right created by these Standard Terms & Conditions or any proposals, invoices and other forms used by National Event Pros, or by reason of any breach of thereof, the prevailing party shall be entitled to recover reasonable attorneys' fees as fixed by the trial court and all appellate courts.

10. Notices. Any notices shall be given to the appropriate party at the address specified in the Invoice proposal or at such other address as a party shall specify in writing. Such notice shall be deemed given upon personal delivery, or when sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing. Notice by email shall be effective only if receipt of that email is acknowledged by the recipient via return email.

11. Merger. These Standard Terms and Conditions, the Invoice and any Supplemental Terms together encompass the entire agreement of the parties, and supersede any previous understandings and agreements between the parties, whether oral or written.

NATIONAL EVENT PROS SITE REQUIREMENTS RIDER

Your Invoice proposal and the Site Requirements Rider set out specific space, electrical and other site requirements for your event location. It is your responsibility to ensure that the site and area for Attractions are adequate for National Event Pros' Attraction equipment, including staging, height and run-up areas for the games. National Event Pros is not responsible for areas in which the Attraction equipment will not fit, or for any surfaces which may be worn or flattened by use of the equipment. For your guests' safety, the area should be level, free of rocks and any objects or debris which may interfere with the use of or cause damage to any Attraction equipment. Grass or cement is recommended; dirt, mud, gravel and beauty bark are not allowable surfaces.

Please review these requirements carefully and address any questions to National Event Pros at least 21 days prior to your event.

a. **Electrical Requirements.** Electrical requirements for each Attraction are specified in your Invoice. National Event Pros is not responsible for inadequate power supplied at your site. If adequate electrical service is not available, National Event Pros may be able to provide a generator for an additional fee. No refunds will be given for Attraction equipment that is unusable because adequate power supply is not available or prearranged. For inflatable Attractions, electrical supply must be located within 70 feet of the inflation fan. Washington State regulations (WAC 296-403-240) prohibits the use of extension cords for inflatable Attractions. Please consult with your Site Owner regarding your event's specific electrical requirements so that adequate power is ensured.

b. **Space Requirements.** It is your responsibility to ensure the event area is adequate for the Attraction equipment dimensions. The area required for each piece of Attraction equipment is specified in the Invoice. Sufficient space and access must be available for all Attraction equipment. Barriers to load-in, involving stairs, elevators, difficult access to loading docks and narrow doors may cause delays with setup or prevent delivery, setup or use of our Attraction equipment.

c. **Performers.** It is your responsibility to provide suitable set-up and dressing areas for any Performers, as indicated in your Invoice proposal.

d. **Inflatable Attractions.** An additional four-foot minimum perimeter must be allowed for any inflatable Attraction for user safety. Special attention should be paid to the surface area where the inflatable attraction will be placed to avoid damage to the Attraction. Electrical supply must be located within 70 feet of the inflation fan. Washington State regulations (WAC 296-403-240) prohibits the use of extension cords for inflatable Attractions.

e. **Water Attractions.** Our water attractions do not contain any water filtration or water cleaning system. It is your responsibility to maintain water cleanliness. Water should come from the tap (i.e., drinking water) or other treated water source. To prevent contamination, water should be drained and refilled every four hours while the Attraction is in use. Water Attractions should never be left unattended.

I have read and understand the terms of this Invoice, the Standard Terms and any additional attached documents identified herein and agree to be bound by them. I further warrant and represent that I am either the client named above or authorized to act on the client's behalf as their agent.

Date: _____ Client Signature: _____ Client Name: Doug Farmer

Invoice: #6282145

CITY OF ABERDEEN
LEGISLATIVE DEPARTMENT

Mr. Mayor: Hon. Pete Schave

The Members of
Your Committee On: **Finance Committee and the Parks Director**

In Reference To: **Splash 2020**

Reports and recommendations as follows:
The City of Aberdeen, Parks Department, has a contract from Pyro Spectaculars North, Inc. to provide a professional firework show at the Splash Festival on July 4, 2020. The $12,700.00 contract for 'all inclusive services' to include a licensed pyrotechnic operator, specialized crew, an electronic firing system, and safety equipment used for support and protection. The price also includes insurance coverage, sales tax, and delivery.

The parks department continues to raise funds through local sponsorships. The signed contract is due by March 10, 2020 and a $6,350.00 deposit is due by April 3, 2020. The remaining balance is due by July 6, 2020.

Pyro Spectaculars North, Inc. provided the show in 2019. We had contracted with Entertainment Fireworks, Inc. for several years and Pyro Spectaculars North, Inc. moved quickly to provide a show when EFI closed their business last year.

***Recommend as follows*:**
It is recommended that the City Council authorize the Mayor to sign the Production Agreement with Pyro Spectaculars North, Inc. for the Splash Firework show in the amount of $12,700.00.

Stacie Barnum, Parks Director

Debbie Ross, Chair

Kati Kachman, Vice Chair

Reported: February 26, 2020

John Maki

Adopted: _____

Dee Anne Shaw

FINANCE COMMITTEE REPORT

PROPOSAL

2020 Pyrotechnic Proposal

City of Aberdeen

July 4, 2020

Pyro Spectaculars North, Inc.
5301 Lang Avenue
McClellan, CA 95652
Tel: 909-355-8120 :::: Fax: 909-355-9813

PRODUCTION AGREEMENT

(Special)

This agreement ("Agreement") is made this _____day of _____, 2020 by and between **Pyro Spectaculars North, Inc.**, a California corporation, hereinafter referred to as ("PYRO"), and **City of Aberdeen, a Washington municipal corporation**, hereinafter referred to as ("CLIENT"). PYRO and CLIENT are sometimes referred to as "Party" or collectively as "Parties" herein.

1. **Engagement** - CLIENT hereby engages PYRO to provide to CLIENT one fireworks production ("Production"), and PYRO accepts such engagement upon all of the promises, terms and conditions hereinafter set forth. The Production shall be substantially as outlined in Program "A", attached hereto and incorporated herein by this reference.

1.1 **PYRO Duties** – PYRO shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the cost of which, including standby fees, shall be paid by CLIENT) relating to the Production, insurance covering the Production and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work ("Scope of Work"), attached hereto, incorporated herein by this reference, and made a part of this Agreement as though set forth fully herein.

1.2 **CLIENT Duties** – CLIENT shall provide to PYRO a suitable site ("Site") for the Production, security for the Site as set forth in Paragraph 6 hereof, access to the Site, any permission necessary to utilize the Site for the Production, and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work. All Site arrangements are subject to PYRO's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of CLIENT, including, but not limited to, access, use, control, parking and general safety with respect to the public, CLIENT personnel and other contractors.

2. **Time and Place** - The Production shall take place on **July 4, 2020**, at approximately **10:00 PM**, at **Morrison Riverfront Park City, Over the Chehalis River, 1401 Saargent Blvd., Aberdeen, WA**, Site.

3. **Fees, Interest, and Expenses** -

3.1 **Fee** - CLIENT agrees to pay PYRO a fee of **$12,700.00**USD (**TWELVE THOUSAND SEVEN HUNDRED DOLLARS**) ("Fee") for the Production. CLIENT shall pay to PYRO **$6,350.00** USD (**SIX THOUSAND THREE HUNDRED FIFTY DOLLARS**) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at **$0.00 OR an amount to be determined,** for a total of **$6,350.00**, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than **April 3, 2020**. The balance of the Fee shall be paid no later than **July 6, 2020**. CLIENT authorizes PYRO to receive and verify credit and financial information concerning CLIENT from any agency, person or entity including but not limited to credit reporting agencies. The "PRICE FIRM" date, the date by which the executed Agreement must be delivered to Pyro, is set forth in paragraph 20.

3.2 **Interest** - In the event that the Fee is not paid in a timely manner, CLIENT will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance. If litigation arises out of this Agreement, the prevailing party shall be entitled to reasonable costs incurred in connection with the litigation, including, but not limited to attorneys' fees.

3.3 **Expenses** – PYRO shall pay all normal expenses directly related to the Production including freight, insurance as outlined, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics and those additional items as outlined as PYRO's responsibility in the Scope of Work. CLIENT shall pay all costs related to the Production not supplied by PYRO including, but not limited to, those items outlined as CLIENT's responsibility in this Agreement and Scope of Work.

4. **Proprietary Rights** - PYRO represents and warrants that it owns all copyrights, including performance rights, to this Production, except that PYRO does not own CLIENT-owned material or third-party-owned material that has been included in the Production, and as to such CLIENT-owned and third-party-owned material, CLIENT assumes full responsibility therefore. CLIENT agrees that PYRO shall retain ownership of, and all copyrights and other rights to, the Production, except that PYRO shall not acquire or retain any ownership or other rights in or to CLIENT-owned material and third-party-owned material and shall not be responsible in any way for such material. If applicable, CLIENT consents to the use of CLIENT-owned material and represents that it has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with this Production. PYRO reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by CLIENT by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.

5. **Safety** - PYRO and CLIENT shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within PYRO's sole discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of this Agreement by PYRO for fireworks to fail or malfunction, or for PYRO to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of PYRO.

6. **Security** - CLIENT shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by PYRO from entering an area to be designated by PYRO as the area for the set-up and discharge of the Production, including a fallout area satisfactory to PYRO where the pyrotechnics may safely rise and any debris may safely fall. PYRO shall have no responsibility for monitoring or controlling CLIENT's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public or contractor facilities associated with the Production.

7. **Cleanup** - PYRO shall be responsible for the removal of all equipment provided by PYRO and clean up of any live pyrotechnic debris made necessary by PYRO. CLIENT shall be responsible for any other clean up which may be required of the Production or set-up, discharge and fallout areas including any environmental clean-up.

8. **Permits** - PYRO agrees to apply for permits for the firing of pyrotechnics only from the **ABERDEEN FIRE DEPARTMENT**, FAA, and USCG, if required. CLIENT shall be responsible for any fees associated with these permits including standby fees. CLIENT shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements for Police Departments, other Fire Departments, r closures, event/activity or land use permits or any permission or permit required by any Local, Regional, State or Federal Government.

9. **Insurance** - PYRO shall at all times during the performance of services herein ensure that the following insurance is maintained in connection with PYRO's performance of this Agreement: (1) commercial general liability insurance, including products, completed operations, and contractual liability under this Agreement; (2) automobile liability insurance, (3) workers' compensation insurance and employer liability insurance. Such insurance is to protect CLIENT from claims for bodily injury, including death, personal injury, and from claims of property damage, which may arise from PYRO's performance of this Agreement, only. The types and amounts of coverage shall be as set forth in the Scope of Work. Such insurance shall not include claims which arise from CLIENT's negligence or willful conduct or from failure of CLIENT to perform its obligations under this Agreement, coverage for which shall be provided by CLIENT.

The coverage of these policies shall be subject to reasonable inspection by CLIENT. Certificates of Insurance evidencing the required general liability coverage shall be furnished to CLIENT prior to the rendering of services hereunder and shall include that the following are named as additionally insured: CLIENT; Sponsors, Landowners, Barge Owners, if any; and Permitting Authorities, with respect to the operations of PYRO at the Production. Pyrotechnic subcontractors or providers, if any, not covered under policies of insurance required hereby, shall secure, maintain and provide their own insurance coverage with respect to their respective operations and services and subject to the same naming of additionally insured as earlier described in this paragraph.

10. **Indemnification** - PYRO represents and warrants that it is capable of furnishing the necessary experience, personnel, equipment, materials, providers, and expertise to produce the Production in a safe and professional manner. Notwithstanding anything in this Agreement to the contrary, PYRO shall indemnify, hold harmless, and defend CLIENT and the additional insureds from and against any and all claims, actions, damages, liabilities and expenses, including but not limited to, attorney and other professional fees and court costs, in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of PYRO, their officers, agents, contractors, providers, or employees. CLIENT shall indemnify, hold harmless, and defend PYRO from and against any and all claims, actions, damages, liability and expenses, including but not limited to, attorney and other professional fees and court costs in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of CLIENT, its officers, agents, contractors, providers, or employees. In no event shall either party be liable for the consequential damages of the other party.

11. **Limitation of Damages for Ordinary Breach** - Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions of Paragraphs 9 and 10, above, in the event CLIENT claims that PYRO has breached this Agreement or was otherwise negligent in performing the Production provided for herein, CLIENT shall not be entitled to claim or recover monetary damages from PYRO beyond the amount CLIENT has paid to PYRO under this Agreement, and shall not be entitled to claim or recover any consequential damages from PYRO including, without limitation, damages for loss of income, business or profits.

12. **Force Majeure** - CLIENT agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of PYRO which may prevent the Production from being safely discharged on the scheduled date, which may cause the cancellation of any event for which CLIENT has purchased the Production, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Production. If, for any such reason, PYRO is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should any event for which CLIENT has purchased the Production be canceled as a result of such causes, CLIENT may (i) reschedule the Production and pay PYRO such sums as provided in Paragraph 13, or (ii) cancel the Production and pay PYRO such sums as provided in Paragraph 14, based upon when the Production is canceled.

13. **Rescheduling Of Event** - If CLIENT elects to reschedule the Production, PYRO shall be paid the original Fee plus all additional expenses made necessary by rescheduling plus a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within 5 days of receipt. CLIENT and PYRO shall agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled for a date not more than 90 Days subsequent to the date first set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that same year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless PYRO agrees that such rescheduling will not adversely affect normal business operations during those periods.

14. **Right To Cancel** – CLIENT shall have the option to unilaterally cancel the Production prior to the scheduled date. If CLIENT exercises this option, CLIENT agrees to pay to PYRO, as liquidated damages, the following percentages of the Fee as set forth in Paragraph 3.1. 1) 50% if cancellation occurs 30 to 90 days prior to the scheduled date, 2) 75% if cancellation occurs 15 to 29 days prior to the scheduled date, 3) 100% thereafter. In the event CLIENT cancels the Production, it will be impractical or extremely difficult to fix actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if CLIENT cancels the Production.

15. **No Joint Venture** - It is agreed, nothing in this Agreement or in PYRO's performance of the Production shall be construed as forming a partnership or joint venture between CLIENT and PYRO. PYRO shall be and is an independent contractor with CLIENT and not an employee of CLIENT. The Parties hereto shall be severally responsible for their own separate debts and obligations and neither Party shall be held responsible for any agreements or obligations not expressly provided for herein.

16. **Applicable Law** - This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of Washington. It is further agreed that the Grays Harbor County Superior Court in Montesano, Washington, shall be proper venue for any such action. In the event that the scope of the Production is reduced by authorities having jurisdiction or by either Party for safety concerns, the full dollar amounts outlined in this Agreement are enforceable.

17. **Notices** - Any Notice to the Parties permitted or required under this Agreement may be given by mailing such Notice in the United States Mail, postage prepaid, first class, addressed as follows: PYRO – Pyro Spectaculars North, Inc., P.O. Box 2329, Rialto, California, 92377, or for overnight delivery to 3196 N. Locust Avenue, Rialto, California 92377. CLIENT – City of Aberdeen, Parks Director, 200 E. Market Street, Aberdeen, WA 98520.

Pyro Spectaculars North, Inc.
5301 Lang Avenue
McClellan, CA 95652
Tel: 909-355-8120 :::: Fax: 909-355-9813

SCOPE OF WORK
PYRO SPECTACULARS NORTH, INC. ("PYRO")
and
CITY OF ABERDEEN ("CLIENT")

Pyro shall provide the following goods and services to CLIENT:

- One Pyro Spectaculars North, Inc., Production on **July 4, 2020**, at approximately **10:00 PM** at **Morrison Riverfront Park City Park, over the Chehalis River, 1401 Saargent Blvd., Aberdeen, WA**.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic product.
- Application for specific pyrotechnic permits relating to the Production.
- Insurance covering the Production as set forth in the Agreement with the following limits:

Insurance Requirements	***Limits***	
Commercial General Liability	$3,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
Business Auto Liability- Owned, Non-Owned and Hired Autos	$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
Workers' Compensation	Statutory	
Employer Liability	$1,000,000	Per Occurrence

CLIENT shall provide to PYRO the following goods and services:

- All on-site labor costs, if any, not provided or performed by PYRO personnel including, but not limited to, local union requirements, all Site security, Police and Fire Dept. standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers, clean-up crew. All these additional personnel and services shall be fully insured and the sole responsibility of CLIENT.
- Coordination and any applicable non-pyrotechnic permitting with the local, state or federal government that may hold authority within the Production.
- Costs of all permits required for the presentation of the Production and the event as a whole.
- Provision of a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates, including water security to keep unauthorized people, boats, etc. from entering the Safety Zone.
- General Services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for PYRO personnel within the venue, secure parking for PYRO vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., will be required as necessary.

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CITY OF ABERDEEN
LEGISLATIVE DEPARTMENT

Mr. Mayor: Hon. Pete Schave

The Members of Your Committee On: **Finance Committee and the Parks Director**

In Reference To: **Morrison Trust Funds received in 2019**

Reports and recommendations as follows:
The City of Aberdeen, Parks Department, received $77,031 from the John Morrison Trust Fund. John Morrison's request was that the funds be used for "*the purpose of creating new recreational facilities for Grays Harbor Youth*". Since these funds are to be used for a specific purpose, I am requesting the funds be moved from *Fund 102 Parks* to *Fund 320 Public Buildings Fund.* This will allow the use of these funds to be tracked separately from the Parks Fund.

***Recommend as follows*:**
It is recommended that the City Council authorize the Finance Director to transfer $77,031 from Fund 102 to Fund 320.

_____
Stacie Barnum, Parks Director

_____
Debbie Ross, Chair

_____
Kati Kachman, Vice Chair

Reported: February 26, 2020

_____
John Maki

Adopted: _____

_____
Dee Anne Shaw

FINANCE COMMITTEE REPORT

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BILL # 20-_____

ORDINANCE NO. _____

AN ORDINANCE RELATING TO BUSINESS LICENSES AND REGULATIONS, AMENDING ABERDEEN MUNICIPAL CODE 5.03 and 5.07 PURSUANT TO STATE LAW

WHEREAS, the City of Aberdeen levies a Business and Occupation (B&O) tax pursuant to its authority under RCW 35.22.280(32); and,

WHEREAS, under the 2019 SHB 1403, all cities in Washington that levy a B&O tax must update their ordinances to include new model ordinance provisions regarding allocation and apportionment; and,

WHEREAS effective January 1, 2021 the filing deadline for annual B&O tax filers changes to April 15 as established in RCW 82.32.045, NOW THEREFORE:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. CODE CHAPTERS AMENDED. The following Chapters 5.03 (Business & Occupation Tax) and 5.07 (Administrative Provisions for Business & Occupation Tax) of the Aberdeen Municipal Code ("AMC") are hereby amended as follows, where ~~strikethrough~~ language is to be deleted and <u>underlined</u> language is to be added, and corrections to number formatting are provided to match the structure of the model ordinance provisions; any sections, subsections, or paragraphs not provided in this Ordinance are not amended by either this, or the underlying model, ordinance:

<u>Section 1.1 (AMC 5.03)</u>

5.03.030
Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. "Advance," "reimbursement."

~~B. "Agricultural product," "farmer."~~

~~1. "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.~~

~~2. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.~~

B~~C~~. "Artistic or cultural organization". As used in this chapter:

C~~D~~. "Business. " “Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

D ~~E~~. “Business and occupation tax.” “Business and occupation tax” or “gross receipts tax” means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

E~~F~~. "Commercial or industrial use." "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

F~~G~~. “Competitive telephone service.” "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type

which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

G~~H~~. "Consumer." "Consumer" means the following:

H~~I~~. “Delivery” means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer’s representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

I ~~J.~~ "Director." "Director" means the Finance Director of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

J ~~K~~. "Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192.

K ~~L~~. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

L ~~M~~. "Eligible gross receipts tax." The term "eligible gross receipts tax" means a tax which:

M ~~N~~. “Engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

N ~~O~~. “Extracting.” “Extracting” is the activity engaged in by an extractor and is reportable under the extracting classification

O ~~P.~~ "Extractor." "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

P ~~Q~~. "Extractor for Hire" “Extractor for hire” means a person who performs under contract necessary labor or mechanical services for an extractor.

Q ~~R~~. "Gross income of the business." "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

R ~~S.~~ "Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

S ~~T~~. "In this City," "within this City." "In this City " or "within this City" includes all federal areas lying within the corporate city limits of the City.

T ~~U~~. “Manufacturing.” “Manufacturing” means the activity conducted by a manufacturer and is reported under the manufacturing classification.

U ~~V~~. "Manufacturer," "to manufacture."

V ~~W~~. "Newspaper," "magazine," "periodical."

~~X. "Non-profit corporation or non-profit organization." "Non-profit corporation or non-profit organization" means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code, as hereafter amended, or is specifically exempted from the requirement to apply for its tax exempt status under Sec. 501(c)(3) of the Internal Revenue Code, as hereafter amended. Where the term non-profit organization is used, it is meant to include a non-profit corporation.~~

W ~~Y~~. "Office", "place of business." "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control.

X ~~Z~~. "Person." "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

~~AA. "Precious metal bullion or monetized bullion."~~

~~1. "Precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.~~

~~2. "Monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.~~

Y~~BB.~~ "Processing for hire." "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

~~CC. "Product", "Byproduct."~~

~~1. "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.~~

~~2. "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.~~

Z ~~DD~~. "Retailing." "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

AA ~~EE~~. "Retail Service." "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

BB~~FF~~.. "Royalties." "Royalties" mean compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

CC~~GG~~. "Sale," "casual or isolated sale."

DD~~HH~~. "Sale at retail," "retail sale."

EE~~II~~. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in section 5(b)(i), which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

FF~~JJ~~. "Services." means those activities that do not fall within one of the other tax classifications used by a city.

~~KK. "Software", "prewritten software," "custom software," "customization of canned software," "master copies," "retained rights."~~

~~1. "Prewritten software" or "Canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.~~

~~2. "Custom software" means software created for a single person.~~

~~3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.~~

~~4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.~~

~~5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.~~

~~6. "Software" means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.~~

GG~~LL~~. "Taxpayer." "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

~~MM. "Tuition fee." "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as hereafter amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions~~

HH~~NN~~. "Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

II~~OO~~. "Value of products."

3. ~~(3)~~ Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to

(a) the retail selling price of such new or improved product when first offered for sale; or

(b~~2~~) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

JJ ~~PP~~. "Wholesaling." "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

~~**5.03.040**~~
~~**Agency – sales and services by agent, consignee, bailee, factor or auctioneer.**~~
~~A. Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person's own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this chapter. The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:~~
~~1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.~~
~~2. The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's books~~

~~and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.~~
~~3. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.~~
~~4. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.~~
~~B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.~~
~~C. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured. Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:~~
~~1. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.~~
~~2. The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.~~
~~(Ord. 6456, Added, 12/27/2007)~~

5.03.050
Imposition of the tax – tax or fee levied.

(1).~~A~~ Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a)~~1~~. Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of

the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of 2 tenths of one percent (.002). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b)~~2~~. Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of 2 tenths of one percent (.002). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c)~~3.~~ Upon every person engaging within the City in the business of making sales at wholesale, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 3 tenths of one percent (.003).

(d)~~4.~~ Upon every person engaging within the City in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 3 tenths of one percent (.003).

(e)~~5~~. Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 3 tenths of one percent (.003).

(f)~~6~~. Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of 3.7 ~~3.75~~ tenths of one percent (.0037~~5~~). This rate is in effect starting with the quarter ending December 31, 2019.

(g)~~7.~~ Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 3 tenths of one percent (.003). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

(2)~~B~~. The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than $20,000, or is equal to or less than $5,000 during any quarter if on a quarterly reporting basis.

(Ord. 6456, Added, 12/27/2007)

5.03.070
Multiple activities credit when activities take place in one or more cities with eligible gross receipts taxes.

(1)~~A.~~. Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 shall be taxable under each applicable subsection.

(2)~~B~~. Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3)~~C~~. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4)~~D~~. *Credit for persons that sell in the City products that they extract or manufacture.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a)

with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(5)~~E~~. *Credit for persons that manufacture products in the City using ingredients they extract.* Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(6)~~F.~~ *Credit for persons that sell within the City products that they print, or publish and print.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(Ord. 6456, Added, 12/27/2007)

5.03.075
Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

(1)~~A.~~. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

> (a)~~1~~. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.
>
> (b)~~2.~~. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

(c)~~3.~~. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

(2)~~B~~. Person manufacturing within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

(Ord. 6456, Added, 12/27/2007)

5.07.077
Allocation and apportionment of income when activities take place in more than one jurisdiction.

Effective January 1, 2008, g~~G~~ross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

1~~A~~. Gross income derived from all activities other than those taxed as service or royalties under 5.03.050(1) (g) shall be allocated to the location where the activity takes place.

2~~B~~. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

3~~C~~. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

a~~1~~. The seller's place of business if the purchaser receives the digital product at the seller's place of business;

b~~2.~~ If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

c~~3~~. If the location where the purchaser or the purchaser's done receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

d4. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

e~~5~~. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050(2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

4~~D~~. If none of the methods in subsection 5.03.077(3) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsection 5.03.077(3), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsection 5.03.077(3) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

5~~E~~. For purposes of subsection 5.03.077(3~~C~~), the following definitions shall apply:

(a) "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192;

(b) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(c); and

(c) "Receive" has the same meaning as in RCW 82.32.730.

6~~F~~. Effective January 1, 2020, ~~G~~gross income derived from activities taxed as services and other activities taxed under 5.03.050(1) (g) shall be apportioned to the city by multiplying

apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a)~~1~~. The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i)~~a.~~ The individual is primarily assigned within the city;
(ii)~~b.~~ The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or
(iii)~~c.~~ The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b)~~2.~~ The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if~~:~~ the customer location is in the city.~~a. The customer location is in the city; or~~

~~b. The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or~~

~~c. The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.~~

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (6) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (6)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or

county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

(d)~~3~~. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city ~~or cities in which the taxpayer does business,~~ the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, ~~that one of the following methods be used jointly by the cities to allocate or apportion gross income,~~if reasonable:

(i)~~a.~~ Separate accounting;
(ii)~~b. The use of a single factor~~ The exclusion of any one or more factors;
(iii)~~c.~~ The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
(iv)~~d.~~ The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(e)The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this subsection (6~~F~~) must prove by a preponderance of the evidence:

(i) That the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the city; and
(ii) That the alternative to such provisions is reasonable.
The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).

(g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a

material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

7. The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(c). "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

~~3. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.~~

(d) **"Customer"** means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "Customer location" means the following: ~~city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place~~.

i. For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.
ii. For a customer not engaged in business, if the service does not require the customer to be physically present:
    (A) The customer's residence; or

(B) If the customer's residence is not known, the customer's billing/mailing address

iii. For a customer engaged in business:

(A) Where the services are ordered from;

(B) At the customer's billing/mailing address if the location from which the services are ordered is not known; or

(C) (iiI) At the customer's commercial domicile if none of the above is known.

(f) **"Individual"** means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(g)~~5. ~~"Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(h).~~6.~~ "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(i)~~7~~. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

~~8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.~~

8. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Effective January 1, 2020

Prior to the adoption of 6540 on 12/26/2012, Section 5.03.077 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.03.090
Exemptions.

~~A. *Non-profit corporations or non-profit organizations.* This chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.~~

~~B. *Health maintenance organization, health care service contractor, certified health plan.* This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.~~

A ~~C~~. *Public utilities.* This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 3.76 AMC (utility tax).

B ~~D~~. *Investments - dividends from subsidiary corporations.* This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

~~E. *International banking facilities.* This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12) CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).~~

C ~~F.~~ *Insurance business.* This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross

premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

~~G. *Farmers - agriculture.* This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk poultry, meats or any other agricultural product that is raised, caught, produced, or manufactured by such persons.~~

~~H. *Athletic exhibitions.* This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Boxing Commission.~~

~~I. *Racing*. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.~~

~~J. *Ride sharing.* This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.~~

D ~~K~~. *Employees.*

E ~~L~~. *Amounts derived from sale of real estate.* This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

F ~~M~~. *Mortgage brokers' third-party provider services trust accounts.* This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

G ~~N~~. *Amounts derived from manufacturing, selling or distributing motor vehicle fuel.* This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.38.020 and exempt under RCW 82.38.280, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

H ~~O~~. *Amounts derived from liquor, and the sale or distribution of liquor.* This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

I ~~P~~. *Casual and isolated sales.* This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

J ~~O.~~ *Accommodation sales.* This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

K ~~P.~~ *Taxes collected as trust funds.* This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

5.03.100
Deductions.

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

~~A. *Compensation from public entities for health or social welfare services - exception.* In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For~~

~~purposes of this subsection, "employee benefit plan" includes the military benefits program authorized in 10 USC Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.~~

~~B. *Interest on investments or loans secured by mortgages or deeds of trust.* In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.~~

~~C. *Interest on obligations of the state, its political subdivisions, and municipal corporations.* In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.~~

~~D. *Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.* In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.~~

(1) ~~E.~~ *Receipts from tangible personal property delivered outside the State.* In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

(2) ~~F.~~ *Cash discount taken by purchaser.* In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) ~~G.~~ *Credit losses of accrual basis taxpayers.* In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose

regular books of account are kept upon an accrual basis.

~~H. *Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.*~~

~~1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:~~

~~a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;~~

~~b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or~~

~~c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.~~

~~2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.~~

~~3. To qualify for the deductions under this subsection:~~

~~a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;~~

~~b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;~~

~~c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.~~

~~I. *Sales at wholesale or retail of precious metal bullion and monetized bullion.* In computing tax, there may be deducted from the measure of the tax amounts derived from the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salesmen or other employees.~~

~~J. *Amounts representing rental of real estate for boarding homes.* In computing tax, there may be deducted from the measure of tax amounts representing the value of the rental of real estate for "boarding homes." To qualify for the deduction, the boarding home must meet the definition of "boarding home, and licensed by the State of Washington under RCW 18.20. The deduction shall be in the amount of twenty-five percent (25%) of the gross monthly billing when the boarder has resided within the boarding home for longer than thirty (30) days.~~

~~K. *Radio and television broadcasting - advertising agency fees - national, regional, and network advertising - interstate allocations.* In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:~~

~~1. advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;~~

~~2. actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and~~

~~3. local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.~~

(4) ~~L.~~ *Constitutional prohibitions.* In computing tax, there may be deducted from the

measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

(5) ~~M.~~ *Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.* Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

(6) ~~N.~~ *Professional employer services.* In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits , workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

(7) ~~O.~~ *Interest on investments or loans secured by mortgages or deeds of trust.* In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

~~enefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.~~

Section 1.2 (AMC 5.07):

5.07.020
Definitions.

The definitions contained in chapter 5.03 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions shall apply:

"Reporting period." "Reporting period" means:

(1)~~A.~~ A one-month period beginning the first day of each calendar month (monthly); or

(2)~~B.~~ A three-month period beginning the first day of January, April, July or October of each year (quarterly); or

(3)~~C.~~ A twelve-month period beginning the first day of January of each year (annual).

5.07.025
Registration/license requirements
Registration and license requirements are contained in Chapter 5.10.

5.07.040
When due and payable – Reporting periods – Monthly, quarterly and annual returns – Threshold provisions or Relief from filing requirements – Computing time periods – Failure to file returns.

(1)~~A.~~ Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, t~~T~~ax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time provided in RCW 82.32.045 (1), (2), and (3).

(2)~~B.~~ Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(3)~~C.~~ Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4)~~D.~~ For purposes of the tax imposed by chapter 5.03 any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than Five Thousand Dollars ($5,000) in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

(5)~~E.~~ A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

(6)~~F.~~ Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7)~~G.~~ If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

(Ord. 6456, Added, 12/27/2007)

5.07.050
Payment methods – Mailing returns or remittances – Time extensions – Deposits – Recording payments – Payments must accompany return – NSF checks.

(1)~~A.~~ Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance

of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

(2)~~B.~~ A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

(3)~~C.~~ If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

(4)~~D.~~ The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

(5)~~E.~~ For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

(6)~~F.~~ Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars ($20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars ($20.00) NSF fee) is received.

(7)~~G.~~ The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

(Ord. 6456, Added, 12/27/2007)

5.07.060
Records to be preserved – Examination – Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

(1)~~A.~~ If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

(2)~~B.~~ Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

(Ord. 6456, Added, 12/27/2007)

5.07.070
Accounting methods.

(1)~~A.~~ A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

(2)~~B.~~ The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

(Ord. 6456, Added, 12/27/2007)

5.07.090
Underpayment of tax, interest, or penalty - Interest.

(1)~~A.~~ If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

(2)~~B)~~a)~~(1~~. All fees, taxes and other amounts due the city of Aberdeen pursuant to this title prior to January 1, 2005, and not paid by the due date, shall bear interest at the rate of one percent per month, or any portion thereof, to be assessed by applying the rate to the amount due, or any portion thereof, from the first date the amount becomes due and unpaid through the effective date of this ordinance.

b)~~2.~~ For tax periods after December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

c)~~3.~~ If 5.07.090 2(b) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.095
Time in which assessment may ~~can~~ be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

(1)~~A.~~ Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years

prior to the close of the calendar year in which the person was contacted in writing by the Director;

(2)~~B.~~ Against a person that has committed fraud or who misrepresented a material fact; or

(3)~~C.~~ Against a person that has executed a written waiver of such limitations.

(Ord. 6456, Added, 12/27/2007)

5.07.100
Overpayment of tax, interest, or penalty – Credit or refund Interest rate – Statute of limitations.

(1)~~A.~~ If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)~~B.~~ The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

(3)~~C~~ Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

(4)~~D.~~ Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5)~~E.~~ a)~~1~~. For tax periods prior to January 1, 2005 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed at the rate of one percent per month.

b)~~2~~. For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

c)~~3~~. If 5.07.100(5)(b) is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.110
Late payment – Disregard of written instructions – Evasion - Penalties.

(1)~~A.~~ If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

(2)~~B.~~ If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

(3)~~C.~~ If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 8232.090(3), as it now exists or as it may be amended.

(4)~~D~~. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by Section 5.10, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be Amended. No penalty shall be imposed under this subsection (4) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

(5)~~E.~~ If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

(6)~~F.~~ If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

(7)~~G.~~ The penalties imposed under subsections (1) through (5) above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8)~~H.~~ The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9)~~I.~~ For the purposes of this section, "return" means any document a person is required by the City of Aberdeen to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.

(10)~~J.~~ If incorporation into the City of Aberdeen code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.120
Cancellation of penalties.

(1)~~A.~~ The Director may cancel any penalties imposed under subsections 5.07.110(1) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (3).

(2)~~B~~ A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

(3)~~C.~~ The Director may cancel the penalties in subsections 5.07.110(1) one time if a person:

(a)~~1.~~ Is not currently licensed and filing returns,

(b)~~2.~~ Was unaware of its responsibility to file and pay tax, and

(c)~~3.~~ Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

(4)~~D.~~ The Director shall not cancel any interest charged upon amounts due.

(Ord. 6456, Added, 12/27/2007)

5.07.130
Taxpayer quitting business – Liability of successor.

(1)~~A.~~ Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

(2)~~B.~~ Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

(3)~~C.~~ Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

(4)~~D.~~ Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

(Ord. 6456, Added, 12/27/2007)

5.07.140
Administrative appeal~~– Hearing before city council~~.

~~A.~~ Any person, except one who has failed to comply with section 5.07.060, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter, may pay the amount due and appeal from such determination by filing a written notice of appeal with the Director within (~~21~~30) days from the date written notice of such amount was mailed to the taxpayer. The city council shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The city council may refer the matter to a standing committee to conduct the hearing and report its decision to the city council. At such hearing, the appellant shall be entitled to be heard and to introduce evidence. The city council shall ascertain the correct amount of the fee or tax by resolution, or by adoption of a committee report, and the director shall notify the appellant thereof by mail, which amount, together with the costs of the appeal, if appellant is unsuccessful therein, shall be immediately due and payable.

~~B.~~ The mayor or the chairman of any committee before which the appeal is to be heard may, by subpoena, require the attendance of any person, and may also require the production of any pertinent books and records. Any person served with such subpoena shall appear at the time and place administered by the chairman in charge of the hearing on appeal as to any matter required of him pertinent to the appeal, and it is unlawful to fail or refuse so to do.

(Ord. 6456, Added, 12/27/2007)

5.07.150
Judicial Review of ~~City Council~~ Administrative Appeal Decisions.

~~Any person, except one who has failed to comply with section 5.07.060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the Grays Harbor County Superior Court within (21) days of the date of the decision of the city council. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced~~

~~or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax~~ Taxpayer or the City may obtain judicial review of the administrative appeal decision under 5.07.140 by applying for a Writ of Review in the Grays Harbor County Superior Court within 21 days from the issuance of the administrative appeal decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

~~(Ord. 6456, Added, 12/27/2007)~~

5.07.170
Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

(1)~~A.~~ To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Aberdeen, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

(2)~~B.~~ To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

(3)~~C.~~ To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

(Ord. 6456, Added, 12/27/2007)

5.07.200
Public disclosure – Confidentiality – Information sharing.

1)~~A.~~ For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

a)~~1.~~ "Disclose" means to make known to any person in any manner a return or tax information.

b)~~2~~ "Tax information" means:

i)~~a.~~ A taxpayer's identity;

ii)~~b.~~ The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

iii)~~c~~ Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

iv)~~d.~~ Other data received by, recorded by, prepared by, or provided to the city with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under Chapter 5.03 AMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. Data, material or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.

c)~~3.~~ "City agency" means every City office, department, division, bureau, board, commission, or other City agency~~of the city of Aberdeen~~.

d)~~4.~~ "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

2)~~B.~~ Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

3)~~C.~~ This section does not prohibit the Director from:

a)~~1~~ Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

i)~~a.~~ In respect of any tax imposed under Chapter 5.03 AMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

ii)~~b.~~ In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.

b)~~2.~~ Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to AMC 5.07.160, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

c)~~3~~ Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof.

d)~~4.~~ Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

e)~~5.~~ Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;

f)~~6.~~ Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;

g)~~7.~~ Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

h)~~8.~~ Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

i)~~9.~~ Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

j)~~10.~~ Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection

may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

k)~~11.~~ Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

l)~~12~~ Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

m)~~13~~ Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

n)~~14.~~ Disclosing to a person against whom the department has asserted liability as a successor under AMC 5.03.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

o)~~15.~~ Disclosing real estate excise tax affidavit forms filed under City's real estate excise tax code [if applicable] in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

p)~~16~~ Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

4)~~D~~

a)~~1~~ The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation.

The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

b)~~2.~~ Before disclosure of any tax return or tax information under this subsection (4), the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

c)~~3.~~ The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

i)~~a.~~ The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

ii)~~b.~~ The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

iii)~~c.~~ The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

d)~~4.~~ The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

e)~~5.~~ Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

5)~~E.~~ Service of a subpoena issued by the court or under Aberdeen Municipal Code provisions authorizing the issuance of subpoenas does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with such subpoena may disclose the existence or content of the subpoena to that person's legal counsel.

6)~~F.~~ Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (3)(d), (e), (f). (g), (h), (i), or (k) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two years thereafter.

Prior to the adoption of 6540 on 12/26/2012, Section 5.07.200 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.07.220
Unlawful actions – Violations - Penalties.

1)~~A.~~ It shall be unlawful for any person liable for taxes or fees under this ~~title~~chapter (or other chapters as listed):

a)~~1~~ To violate or fail to comply with any of the provisions of this title or any lawful rule or regulation adopted by the Director;

b)~~2.~~ To make any false statement on any license application or tax return;

c)~~3.~~ To aid or abet any person in any attempt to evade payment of a license fee or tax;

d)~~4.~~ To fail to appear or testify in response to a subpoena issued pursuant to this ~~title~~ chapter;

e)~~5.~~ To testify falsely in any investigation, audit, or proceeding conducted pursuant to this ~~title~~ chapter.

2)~~B.~~ Violation of any of the provisions of this ~~title~~ chapter is a gross misdemeanor. Any person convicted of a violation of this ~~title~~ chapter may be punished by a fine not to exceed $~~5~~1,000, imprisonment not to exceed ~~364 days~~ one year, or both fine and imprisonment. The penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

3)~~C.~~ Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed $5,000, or imprisonment not to exceed ~~364 days~~ one year, or both fine and imprisonment.

Prior to the adoption of 6581 on 08/26/2015, Section 5.07.220 read as follows.
(Ord. 6581, Amended, 08/26/2015; Ord. 6456, Added, 12/27/2007)

5.07.230
Suspension or revocation of business license.

1)~~A.~~ The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this title, unless otherwise provided. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under this title may be suspended or revoked based on one or more of the following grounds:

(a)~~1.~~ The license was procured by fraud or false representation of fact.

(b)~~2.~~ The licensee has failed to comply with any provisions of this title.

(c)~~3.~~ The licensee has failed to comply with any provisions of the municipal code.

(d)~~4.~~ The licensee is in default in any payment of any license fee or tax under this title.

(e)~~5.~~ The licensee or employee has been convicted of a crime involving the business.

(2)~~B.~~ Any licensee may, within twenty-one (21) days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the Director. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the city council. The hearing ~~date before the city council~~ shall be conducted in accordance with the procedures for hearing contested cases set out in this chapter. The city council shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the city council shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

(3)~~C.~~ Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

(Ord. 6456, Added, 12/27/2007)

5.07.240
Closing agreement provisions.

1)~~A.~~ The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and

2)~~B.~~ In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(Ord. 6456, Added, 12/27/2007)

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. **PUBLICATION BY SUMMARY.** The Finance Director is authorized and directed to publish the attached summary in lieu of this ordinance.

SECTION 4. **EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage, signing, and publication.

PASSED and **APPROVED** this ___ day of _____, 2020.

_____
Pete Schave, Mayor

ATTESTED:

_____
Cliff Frederickson, Finance Director

Bill 20-_____

SUMMARY FOR PUBLICATION
ORDINANCE NO. _____

AN ORDINANCE RELATING TO BUSINESS LICENSES AND REGULATIONS, AMENDING ABERDEEN MUNICIPAL CODE Chapters 5.03 and 5.07 PURSUANT TO STATE LAW

Section 1: Code Chapter Amended. Amending AMC Chapters 5.03 and 5.07 to include new model ordinance provisions regarding allocation and apportionment

Section 2: Severability. Severing any portion declared unconstitutional or invalid, while retaining remaining portions.

Section 3: Authorizing Publication by Summary. Authorizing to publish this summary in lieu of entirety.

Section 4: Effective Date. Effective immediately upon passage, signing, and publication.

Passed and Approved: _____ day of _____, 2020

Signed: /s/ Pete Schave, Mayor

Attest: /s/ Cliff Frederickson, Interim Finance Director

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5.03.010
Purpose.

The provisions of this chapter shall be deemed an exercise of the power of the city of Aberdeen to impose a license tax, for revenue purposes, on every kind of business transacted or carried on within the city.

(Ord. 6456, Added, 12/27/2007)

5.03.020
Exercise of revenue license power.

The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

(Ord. 6456, Added, 12/27/2007)

5.03.028
Administrative Provisions.

The administrative provisions contained in chapter 5.07 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

(Ord. 6456, Added, 12/27/2007)

5.03.030
Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. "Advance," "reimbursement."

1. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.

2. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

C. "Artistic or cultural organization". As used in this chapter:

1. The term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection 10 of this section, for viewing or attendance by the general public.

2. The organization must be a not-for-profit corporation under chapter 24.03 RCW.

3. The organization must be managed by a governing board of not less than eight (8) individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW.

4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws.

5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.

6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, sexual orientation, Vietnam or disabled veteran status, or the presence of any mental or physical disability.

10. The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" is limited to:

a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

b. A musical or dramatic performance or series of performances; or

c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

D. "Business. " “Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

E. “Business and occupation tax.” “Business and occupation tax” or “gross receipts tax” means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

F. "Commercial or industrial use." "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

1. Any use as a consumer; and

2. The manufacturing of articles, substances or commodities;

G. “Competitive telephone service.” "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

H. "Consumer." "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for a consumer other than for the purpose of:

a. resale as tangible or intangible personal property in the regular course of business;

b. incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

c. incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or

d. consuming the property in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

2. Any person engaged in any business activity taxable under section .050(1)(g);

3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;

4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in section .030C, other than for resale in the regular course of business;

5. Any person who is an end user of software;

6. Any person engaged in the business of "public road construction" in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

7. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

8. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

9. Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

I. “Delivery” means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer’s representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

J. "Director." "Director" means the Finance Director of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

K. "Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192.

L. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

M. "Eligible gross receipts tax." The term "eligible gross receipts tax" means a tax which:

1. is imposed on the act or privilege of engaging in business activities within section .050; and

2. is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and

3. is not, pursuant to law or custom, separately stated from the sales price; and

4. is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and

5. is a tax imposed by a local jurisdiction, whether within or without the state of Washington, and not by a country, state, province, or any other non-local jurisdiction above the county level.

N. “Engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

1. This subsection sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the city without having to pay a business license fee. The activities listed in this subsection are illustrative only and are not intended to narrow the definition of “engaging in business” in this subsection. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

2. Without being all-inclusive, any one (1) of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license:

a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.

b. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the city.

c. Soliciting sales.

d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

f. Installing, constructing, or supervising installation or construction of real or tangible personal property.

g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.

h. Collecting current or delinquent accounts.

i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.

n. Investigating, resolving, or otherwise assisting in resolving customer complaints.

o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

3. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license:

a. Meeting with suppliers of goods and services as a customer.

b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

d. Renting tangible or intangible property as a customer when the property is not used in the city.

e. Attending, but not participating in, a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances.

f. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the city.

4. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the city. Such activities do not include those in subsection (N)(3) of this section.

The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the Constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

O. "Extracting." "Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification

P. "Extractor." "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under

contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

Q. "Extractor for Hire" “Extractor for hire” means a person who performs under contract necessary labor or mechanical services for an extractor.

R. "Gross income of the business." "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

S. "Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

T. "In this City," "within this City." "In this City " or "within this City" includes all federal areas lying within the corporate city limits of the City.

U. “Manufacturing.” “Manufacturing” means the activity conducted by a manufacturer and is reported under the manufacturing classification.

V. "Manufacturer," "to manufacture."

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person’s own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.

2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

a. The production of special made or custom made articles;

b. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and

d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

e. “To manufacture” shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

W. "Newspaper," "magazine," "periodical."

1. "Newspaper" means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.

2. "Magazine, or periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

Y. "Office", "place of business." "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control.

1. The regular business of the person is presumed conducted at a location:

a. Whose address the person uses as its business mailing address;

b. Where the place of primary use is shown on a telephone billing or a location containing a telephone line listed in a public telephone directory or other similar publication under the business name; and

c. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and

d. Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.

2. A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business.

3. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

Z. "Person." "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

AA.. "Processing for hire." "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

BB. “Retailing.” “Retailing” means the activity of engaging in making sales at retail and is reported under the retailing classification.

CC. "Retail Service." “Retail service” shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons;

2. Abstract, title insurance, and escrow services;

3. Credit bureau services;

4. Automobile parking and storage garage services;

5. Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

6. Service charges associated with tickets to professional sporting events; and

7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.

8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

DD.. "Royalties." "Royalties" mean compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

EE. "Sale," "casual or isolated sale."

1. "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

FF. "Sale at retail," "retail sale."

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. “Sale at retail” or “retail sale” also means every sale of tangible personal property to persons engaged in any business activity which is taxable under AMC 5.03.050(1)(g).

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The installing, repairing altering, or improving of digital goods for consumers;

h. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

4. “Sale at retail” or “retail sale” shall also include the providing of competitive telephone service to consumers.

5. “Sale at retail” or “retail sale” shall also include:

a. The sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (5)(a) the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may characterized by the vendor or by the purchaser. The term "sale at retail" or "retail sale" does not include the sale of the charge made for:

(i) Custom software; or
(ii) The customization of prewritten software.

(b)

(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis, and the right to access and use prewritten software to perform data processing.

(ii) For purposes of the subsection "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

7. “Sale at retail” or “retail sale” shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the

agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

8. “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

9. “Sale at retail” or “retail sale” shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [This should be reported under the service and other classification.]

10. “Sale at retail” or “retail sale” shall not include the sale of or charge made for labor and services rendered for environmental remedial action [This should be reported under the service and other classification.]

11. “Sale at retail” or “retail sale” shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

a. Sales in which the seller has granted the purchaser the right of permanent use;

b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;

c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services. For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. “Sale at retail” or “retail sale” shall also include the installing, repairing, altering, or improving of digital goods for consumers.

GG. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in section 5(b)(i), which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

HH. “Services.” means those activities that do not fall within one of the other tax classifications used by a city.

II. "Taxpayer." "Taxpayer" means any “person”, as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

JJ. "Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

KK. "Value of products."

1. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to

(a) the retail selling price of such new or improved product when first offered for sale; or

(b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

LL. "Wholesaling." "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

Prior to the adoption of 6540 on 12/26/2012, Section 5.03.030 read as follows.
(Ord. 6633 § 1, Amended, 12/12/2018; Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.03.050
Imposition of the tax – tax or fee levied.

(1). Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a). Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of 2 tenths of one percent (.002). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b). Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of 2 tenths of one percent (.002). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c). Upon every person engaging within the City in the business of making sales at wholesale, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 3 tenths of one percent (.003).

(d). Upon every person engaging within the City in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 3 tenths of one percent (.003).

(e). Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 3 tenths of one percent (.003).

(f). Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of 3.7 tenths of one percent (.0037). This rate is in effect starting with the quarter ending December 31, 2019.

(g). Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 3 tenths of one percent (.003). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

(2). The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than $20,000, or is equal to or less than $5,000 during any quarter if on a quarterly reporting basis.

(Ord. 6456, Added, 12/27/2007)

5.03.070
Multiple activities credit when activities take place in one or more cities with eligible gross receipts taxes.

(1). Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 shall be taxable under each applicable subsection.

(2). Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer

shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3). To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4). *Credit for persons that sell in the City products that they extract or manufacture.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(5). *Credit for persons that manufacture products in the City using ingredients they extract.* Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(6). *Credit for persons that sell within the City products that they print, or publish and print.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(Ord. 6456, Added, 12/27/2007)

5.03.075
Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

(1). Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

> (a). A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

(b). Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

(c). A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

(2). Person manufacturing within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

(Ord. 6456, Added, 12/27/2007)

5.07.076
Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

(Ord. 6456, Added, 12/27/2007)

5.07.077
Allocation and apportionment of income when activities take place in more than one jurisdiction.

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

1. Gross income derived from all activities other than those taxed as service or royalties under 5.03.050(1) (g) shall be allocated to the location where the activity takes place.

2. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

3. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

a. The seller's place of business if the purchaser receives the digital product at the seller's place of business;

b. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

c. If the location where the purchaser or the purchaser's done receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

d. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

e. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050(2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

4. If none of the methods in subsection 5.03.077(3) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsection 5.03.077(3), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsection 5.03.077(3) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

5. For purposes of subsection 5.03.077(3), the following definitions shall apply:

(a) <u>"Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192;</u>

(b) <u>"Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(c); and</u>

(c) "Receive" has the same meaning as in RCW 82.32.730.

6. Effective January 1, 2020, gross income derived from activities taxed as services and other activities taxed under 5.03.050(1) (g) shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which

is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;
(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or
(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if the customer location is in the city..

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (6) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (6)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

(d). If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;
(ii) The exclusion of any one or more factors;
(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(e) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this subsection (6) must prove by a preponderance of the evidence:

(i) That the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the

city; and

(ii) That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).

(g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

7. The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(c). "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(d) **"Customer"** means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "Customer location" means the following:

i. For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.

ii. For a customer not engaged in business, if the service does not require the customer to be physically present:

(A) The customer's residence; or
(B) If the customer's residence is not known, the customer's billing/mailing address

iii. For a customer engaged in business:
(A) Where the services are ordered from;
(B) At the customer's billing/mailing address if the location from which the services are ordered is not known; or
(C) (iiI) At the customer's commercial domicile if none of the above is known.

(f) **"Individual"** means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(g) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(h). "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(i). "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

8. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Effective January 1, 2020

Prior to the adoption of 6540 on 12/26/2012, Section 5.03.077 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.03.078

Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction. Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

(Ord. 6456, Added, 12/27/2007)

5.03.090
Exemptions.

C *Public utilities.* This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 3.76 AMC (utility tax).

D. *Investments - dividends from subsidiary corporations.* This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

F. *Insurance business.* This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

K. *Employees.*

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

2. A booth renter is an independent contractor for purposes of this chapter.

L. *Amounts derived from sale of real estate.* This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

M. *Mortgage brokers' third-party provider services trust accounts.* This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

N. *Amounts derived from manufacturing, selling or distributing motor vehicle fuel.* This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the

term "motor vehicle fuel" is defined in RCW 82.38.020 and exempt under RCW 82.38.280, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

O. *Amounts derived from liquor, and the sale or distribution of liquor.* This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

P. *Casual and isolated sales.* This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

O. *Accommodation sales.* This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

P. *Taxes collected as trust funds.* This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

Prior to the adoption of 6540 on 12/26/2012, Section 5.03.090 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.03.100
Deductions.

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

(1) *Receipts from tangible personal property delivered outside the State.* In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

(2) *Cash discount taken by purchaser.* In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) *Credit losses of accrual basis taxpayers.* In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose

regular books of account are kept upon an accrual basis.

(4) *Constitutional prohibitions.* In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

(5) *Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.* Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

(6) *Professional employer services.* In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits , workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

(7) *Interest on investments or loans secured by mortgages or deeds of trust.* In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

Prior to the adoption of 6540 on 12/26/2012, Section 5.03.100 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.03.120
Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

(Ord. 6456, Added, 12/27/2007)

5.03.130
Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

(Ord. 6456, Added, 12/27/2007)

AMC 5.07

5.07.010
Purpose.

The provisions of this chapter shall supplement, clarify and apply with full force and effect to all other Title Five provisions, except where a section in this chapter shall contradict or conflict with a provision already set forth in another chapter.

(Ord. 6456, Added, 12/27/2007)

5.07.015
Application of chapter stated.

The provisions of this chapter shall apply with respect to the taxes imposed under chapters 5.03 and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

(Ord. 6456, Added, 12/27/2007)

5.07.020
Definitions.

The definitions contained in chapter 5.03 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions shall apply:

"Reporting period." "Reporting period" means:

(1) A one-month period beginning the first day of each calendar month (monthly); or

(2) A three-month period beginning the first day of January, April, July or October of each year (quarterly); or

(3) A twelve-month period beginning the first day of January of each year (annual).

"Return." "Return" means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

"Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

"Tax year," "taxable year." "Tax year" or "taxable year" means the calendar year.

(Ord. 6456, Added, 12/27/2007)

5.07.021
Definitions – references to Chapter 82.32 RCW.

Where provisions of Chapter 82.32 RCW are incorporated in 5.07.090 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in 5.03.030 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

(Ord. 6456, Added, 12/27/2007)

5.07.025
Registration/license requirements

Registration and license requirements are contained in Chapter 5.10.

(Ordinance 6456, Added, 12/27/2007)

5.07.030
Registration/license certificates.

Registration and license requirements are contained in Chapter 5.10.

(Ord. 6456, Added, 12/27/2007)

5.07.040
When due and payable – Reporting periods – Monthly, quarterly and annual returns – Threshold provisions or Relief from filing requirements – Computing time periods – Failure to file returns.

(1) Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time provided in RCW 82.32.045 (1), (2), and (3).

(2) Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(3) Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4) For purposes of the tax imposed by chapter 5.03 any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than Five Thousand Dollars ($5,000) in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

(5) A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

(6) Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

(Ord. 6456, Added, 12/27/2007)

5.07.050
Payment methods – Mailing returns or remittances – Time extensions – Deposits – Recording payments – Payments must accompany return – NSF checks.

(1) Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

(2) A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

(3) If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

(4) The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

(5) For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

(6) Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars ($20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars ($20.00) NSF fee) is received.

(7) The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

(Ord. 6456, Added, 12/27/2007)

5.07.060
Records to be preserved – Examination – Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

(1) If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

(2) Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for

any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

(Ord. 6456, Added, 12/27/2007)

5.07.070
Accounting methods.

(1) A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

(2) The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

(Ord. 6456, Added, 12/27/2007)

5.07.080
Public works contracts – Payment of fee and tax before the final payment for work.

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

(Ord. 6456, Added, 12/27/2007)

5.07.090
Underpayment of tax, interest, or penalty - Interest.

(1) If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

(2)a). All fees, taxes and other amounts due the city of Aberdeen pursuant to this title prior to January 1, 2005, and not paid by the due date, shall bear interest at the rate of one percent per month, or any portion thereof, to be assessed by applying the rate to the amount due, or any portion thereof, from the first date the amount becomes due and unpaid through the effective date of this ordinance.

b) For tax periods after December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

c) If 5.07.090 2(b) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.095
Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

(1) Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;

(2) Against a person that has committed fraud or who misrepresented a material fact; or

(3) Against a person that has executed a written waiver of such limitations.

(Ord. 6456, Added, 12/27/2007)

5.07.100
Overpayment of tax, interest, or penalty – Credit or refund Interest rate – Statute of limitations.

(1) If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to

the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

(3) Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

(4) Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5)a) For tax periods prior to January 1, 2005 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed at the rate of one percent per month.

b) For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

c) If 5.07.100(5)(b) is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.110
Late payment – Disregard of written instructions – Evasion - Penalties.

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

(2) If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

(3) If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 8232.090(3), as it now exists or as it may be amended.

(4) If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by Section 5.10, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be Amended. No penalty shall be imposed under this subsection (4) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

(5) If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

(6) If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

(7) The penalties imposed under subsections (1) through (5) above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the City of Aberdeen to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.

(10) If incorporation into the City of Aberdeen code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

(Ord. 6456, Added, 12/27/2007)

5.07.120
Cancellation of penalties.

(1) The Director may cancel any penalties imposed under subsections 5.07.110(1) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (3).

(2) A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

(3) The Director may cancel the penalties in subsections 5.07.110(1) one time if a person:

(a) Is not currently licensed and filing returns,

(b) Was unaware of its responsibility to file and pay tax, and

(c) Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

(4) The Director shall not cancel any interest charged upon amounts due.

(Ord. 6456, Added, 12/27/2007)

5.07.130
Taxpayer quitting business – Liability of successor.

(1) Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

(3) Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

(4) Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

(Ord. 6456, Added, 12/27/2007)

5.07.140
Administrative appeal.

Any person, except one who has failed to comply with section 5.07.060, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter, may pay the amount due and appeal from such determination by filing a written notice of appeal with the Director within (30) days from the date written notice of such amount was mailed to the taxpayer. The city council shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The city council may refer the matter to a standing committee to conduct the hearing and report its decision to the city council. At such hearing, the appellant shall be entitled to be heard and to introduce evidence. The city council shall ascertain the correct amount of the fee or tax by resolution, or by adoption of a committee report, and the director shall notify the appellant thereof by mail, which amount, together with the costs of the appeal, if appellant is unsuccessful therein, shall be immediately due and payable.

The mayor or the chairman of any committee before which the appeal is to be heard may, by subpoena, require the attendance of any person, and may also require the production of any pertinent books and records. Any person served with such subpoena shall appear at the time and place administered by the chairman in charge of the hearing on appeal as to any matter required of him pertinent to the appeal, and it is unlawful to fail or refuse so to do.

(Ord. 6456, Added, 12/27/2007)

5.07.150
Judicial Review of Administrative Appeal Decisions.

The taxpayer or the City may obtain judicial review of the administrative appeal decision under 5.07.140 by applying for a Writ of Review in the Grays Harbor County Superior Court within 21 days from the issuance of the administrative appeal decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

5.07.160
Director to make rules.

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

(Ord. 6456, Added, 12/27/2007)

5.07.170
Ancillary allocation authority of Director.

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

(1) To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Aberdeen, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

(2) To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

(3) To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

(Ord. 6456, Added, 12/27/2007)

5.07.180
Mailing of notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

(Ord. 6456, Added, 12/27/2007)

5.07.190
Tax declared additional.

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of Aberdeen except as herein otherwise expressly provided.

(Ord. 6456, Added, 12/27/2007)

5.07.200
Public disclosure – Confidentiality – Information sharing.

1) For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

a) "Disclose" means to make known to any person in any manner a return or tax information.

b) "Tax information" means:

i) A taxpayer's identity;

ii) The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

iii) Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

iv) Other data received by, recorded by, prepared by, or provided to the city with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under Chapter 5.03 AMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. Data, material or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information

under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.

c) "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

d) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

3) This section does not prohibit the Director from:

a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

i) In respect of any tax imposed under Chapter 5.03 AMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.

b) Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to AMC 5.07.160, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

c) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof.

d) Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

e) Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;

f) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;

g) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

h) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

i) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

j) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

k) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

l) Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

m) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

n) Disclosing to a person against whom the department has asserted liability as a successor under AMC 5.03.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

o) Disclosing real estate excise tax affidavit forms filed under City's real estate excise tax code [if applicable] in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

p) Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

4)

a) The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

b) Before disclosure of any tax return or tax information under this subsection (4), the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

d) The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

5) Service of a subpoena issued by the court or under Aberdeen Municipal Code provisions authorizing the issuance of subpoenas does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with such subpoena may disclose the existence or content of the subpoena to that person's legal counsel.

6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (3)(d), (e), (f). (g), (h), (i), or (k) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two years thereafter.

Prior to the adoption of 6540 on 12/26/2012, Section 5.07.200 read as follows.
(Ord. 6540, Amended, 12/26/2012; Ord. 6456, Added, 12/27/2007)

5.07.210
Tax constitutes debt.

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Aberdeen and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

(Ord. 6456, Added, 12/27/2007)

5.07.220
Unlawful actions – Violations - Penalties.

1) It shall be unlawful for any person liable for taxes or fees under this chapter (or other chapters as listed):

a) To violate or fail to comply with any of the provisions of this title or any lawful rule or regulation adopted by the Director;

b) To make any false statement on any license application or tax return;

c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

d) To fail to appear or testify in response to a subpoena issued pursuant to this chapter;

e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

2) Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed $1,000, imprisonment not to exceed one year, or both fine and imprisonment. The penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

3) Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed $5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

Prior to the adoption of 6581 on 08/26/2015, Section 5.07.220 read as follows.
(Ord. 6581, Amended, 08/26/2015; Ord. 6456, Added, 12/27/2007)

5.07.230
Suspension or revocation of business license.

1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this title, unless otherwise provided. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under this title may be suspended or revoked based on one or more of the following grounds:

(a) The license was procured by fraud or false representation of fact.

(b) The licensee has failed to comply with any provisions of this title.

(c) The licensee has failed to comply with any provisions of the municipal code.

(d) The licensee is in default in any payment of any license fee or tax under this title.

(e) The licensee or employee has been convicted of a crime involving the business.

(2) Any licensee may, within twenty-one (21) days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the Director. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the city council. The hearing shall be conducted in accordance with the procedures for hearing

contested cases set out in this chapter. The city council shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the city council shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until twenty-one (21) days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the city council. All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the city council shall be final. The licensee and/or the Department may seek review of the decision by the Superior Court of Washington in and for Grays Harbor County within twenty-one (21) days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

(3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

(Ord. 6456, Added, 12/27/2007)

5.07.240
Closing agreement provisions.

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and

2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(Ord. 6456, Added, 12/27/2007)

5.07.250
Charge-off of uncollectible taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer.

(Ord. 6456, Added, 12/27/2007)

5.07.260
Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

(Ord. 6456, Added, 12/27/2007)

LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN

MR. MAYOR: Pete Schave

THE MEMBERS OF
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Equipment Rental Fund – Surplus of Equipment

REPORTS AS FOLLOWS: The Equipment Rental Fund requests to surplus one (1) piece of equipment.

1) 6" Trash Pump
   - This pump was custom built by the Water Department using a surplus Detroit Diesel engine purchased from the Satsop Nuclear Site in 1989. A new pump was purchased and installed and a trailer built to haul this unit. This pump has been heavily used over the last 35 years. While recently in use, the engine failed with a cracked cylinder. An engine of this age, built in 1985 is not worth the cost or effort to repair. It is our suggestion to surplus this unit.

IT IS RECOMMENDED: That the Public Works Committee and the City Council declare this 6" Trash Pump as surplus and authorize Equipment Rental to sell the parts/equipment at auction.

_____
Rick Sangder
Public Works Director

_____
Tim Alstrom, Committee Chair

_____
Nathan Kennedy, Vice-Chair

Reported February 25, 2020

_____
Joshua Francy, Member

Adopted _____ , 2020

_____
Shaney Frame Crosby, Member

LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN

MAYOR: Pete Schave

THE MEMBERS OF
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Public Hearing for the 2020 Stormwater Management Plan (SWMP)

REPORTS AS FOLLOWS: The City's Engineering Department will submit the 2020 SWMP to the City Council no later than February 19th, 2020 to fulfill a requirement of the Western Washington Phase II Municipal Stormwater Permit. The SWMP shall be posted to the City's website at least 2 weeks prior to the public hearing for review. Comments in regards to the SWMP can also be directed to the Stormwater Permit Manager, as described on the City's website.

IT IS RECOMMENDED: The City Council shall pass a resolution setting March 11, 2020 as the date for the public hearing to receive comments on the 2020 Stormwater Management Plan.

_____
Rick Sangder
Public Works Director

_____
Tim Alstrom, Chair

_____
Nathan Kennedy, Vice-Chair

Reported February 25, 2020

_____
Joshua Francy, Member

Adopted _____, 2020

_____
Shaney Frame Crosby, Member

City of Aberdeen
Stormwater Management Program (SWMP)

Calendar Year 2020

Prepared pursuant to the Western Washington Phase II Municipal Stormwater Permit

City of Aberdeen Phase II Permit # WAR04-5026

By

Kevin Eldred, Phase II Permit Manager
February, 2020

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Introduction

Purpose

This document constitutes the City of Aberdeen 2020 Stormwater Management Program (SWMP) as required under condition S5 of the Western Washington Phase II Municipal Stormwater Permit (Permit). The Permit requires the creation and implementation of a SWMP to address eight required program elements (S5.C.1 - S5.C.8), Total Maximum Daily Load (TMDL) (S7), and Monitoring and Assessment (S8) requirements. This SWMP will be attached to the 2019 Annual Compliance Report, which is due to Ecology on March 31, 2020.

The goal of the SWMP is to reduce the discharge of pollutants from the City's municipal separate storm sewer system (MS4) to the maximum extent practicable and to protect the water quality of local streams and rivers, which receive stormwater runoff from the MS4.

Background

In 1972, the United States Congress passed the Clean Water Act (CWA), which established water quality goals for the surface waters of the United States. Congress amended the CWA in 1987 to address stormwater, which resulted in the creation of the National Pollutant Discharge Elimination System (NPDES) permit program, administered by the Environmental Protection Agency. The agency delegated responsibility to administer the NPDES permit program to most states, including Washington State via the Department of Ecology.

The NPDES was created with the goal of restoring water quality in surface waters (rivers, lakes, streams, bays, etc.). Permits and compliance codes were created to regulate stormwater discharges into surface waters by private and governmental entities. Failure to comply with these regulations may result in fines and other penalties.

The Department of Ecology established a two-phase permit program. Phase I focused on large and medium-sized municipalities and counties, construction sites greater than or equal to five acres, and major industrial sources. Phase II, finalized in 2000, applied to "small" municipalities (jurisdictions with population less than 100,000) located within, or partially within, an urbanized area that operate a MS4 which discharges to waters of the state.

The Western Washington Phase II Municipal Stormwater Permit

Aberdeen has a population of less than 100,000, is in Western Washington, and is an operator of a regulated small MS4. Thus, its Stormwater program must comply with the conditions in the Western Washington Phase II Municipal Stormwater Permit. The current Permit was issued on July 1, 2019 with an effective date of August 1, 2019. The Permit will stay in effect until July 31, 2024.

When adhered to, the Permit, allows the Permittee (City of Aberdeen) to discharge stormwater to surface waters and to groundwaters of the State. The Permittee is required to implement programs and activities that reduce pollutants in stormwater to the maximum extent practicable (MEP), using all known, available, and reasonable methods of prevention, control and treatment (AKART). Requirements are established in the following program areas:

- Stormwater Planning
- Public Education and Outreach
- Public Involvement and Participation
- MS4 Mapping and Documentation
- Illicit Discharge Detection and Elimination
- Controlling Runoff from New Development, Redevelopment and Construction Sites
- Operations and Maintenance
- Source Control Program for Existing Development
- Monitoring and Assessment
- Total Maximum Daily Load (TMDL) Requirements

The SWMP must be prepared to inform the public of the planned SWMP activities for the upcoming calendar year. In addition, the Permit requires the City to submit an Annual Compliance Report by March 31 of each year that details actions taken in the previous year to achieve compliance. The full text for the Phase II Permit, the latest SWMP, and the latest Annual Compliance Report is available at: http://www.aberdeenwa.gov

These documents can also be viewed upon request by contacting the City of Aberdeen at 360-537-3222.

The Storm and Surface Water Management Utility – Other Activities

This SWMP details activities that are planned and that fall under the purview of the Permit. The annual stormwater management program plan is one part of the City's overall storm and surface water management strategy. The City established the Storm and Surface Water Utility in 2010 for the purpose of planning, design, construction, maintenance, administration, and operation of all city storm and surface water facilities and for overseeing the design, construction, and maintenance of improvements on private property where these may affect storm and surface water management. The utility contains programs that reduce flooding and protect and improve water quality. Although not directly required, flood reduction efforts can often further stormwater management goals. For further detail on Storm and Surface Water Utility activities, contact the Phase II Permit Manager at 360-537-3222.

Stormwater Management Administration

The City will annually update the SWMP Plan for submittal to Ecology by March 31 of the upcoming calendar year. The purpose of a SWMP is to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, meet state AKART requirements, and protect water quality. The program shall include the actions and activities described in Sections 2 through 7 of this SWMP Plan.

The City will submit annual compliance reports to Ecology by March 31, detailing the activities and compliance actions for the previous year. The reports are to summarize SWMP implementation status and present information from assessment and evaluation activities conducted during the reporting period. The Phase II Permit Manager coordinates among departments within the City and other jurisdictions to eliminate barriers to compliance of the Permit.

The City currently implements activities and programs that meet the performance measure requirements of the Permit. The City will continue to implement the programs and activities established for the 2019-2024 Permit. Actions recommended for continued compliance with stormwater management administration include:

- Tracking and reporting of citywide NPDES expenses for implementing the 2019-24 Permit.
- Developing a database for citywide compliance reporting and documentation under the Permit.
- Summarizing SWMP administration activities and programs for Compliance Report submittals.

The Permit as Document Map

The remainder of this document details the required elements of the SWMP in the Permit, and notes current and planned compliance activities. The Permit requirement sections are noted with parentheses in the corresponding sections of this document.

Section 1 – Stormwater Planning

This section describes Permit requirements related to Stormwater Planning, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

1.1 Permit Requirements

The Permit (Section S5.C.1) requires the City to:

- Convene an inter-disciplinary team to inform and assist in the development, progress, and influence of this program, by August 1, 2020
- Produce a report that describes how stormwater management needs and protection/improvement of receiving water health are informing the planning update processes and influencing policies and implementation strategies.
    - Respond by March 31,2021 to the series of Stormwater Planning Annual Report questions to describe how anticipated stormwater impacts on water quality were addresses, if at all, during the 2013-2019 permit term in updates to the Comprehensive Plan and in other locally initiated or state-mandated, long-range land use plans.
    - Submit by January 1, 2023 a report responding to same questions as above to describe how water quality is being addressed, if at all, during this permit term in updates to the Comprehensive Plan and in other locally initiated or state-mandated, long-range land use plans.
- Require LID Principles and LID BMPs when updating, revising, and developing new local development-related codes, rules, standards, or other enforceable documents, as needed. The intent is to make LID the preferred and commonly-used approach to site development. Development related codes shall be designed to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations, where feasible.

Identify any administrative or regulatory barriers to implementation of LID Principles or LID BMPs.

  - Assess and document any newly identified administrative or regulatory barriers to implementation of LID Principles or LID BMPs and the measures developed to address the barriers. This report should include mechanisms adopted to encourage or require implementation of LID Principles or LID BMPs if applicable.

- Submit a watershed inventory and include a brief description of the relative conditions of the receiving waters and the contributing areas by March 31, 2022. The watershed inventory shall be submitted as a table with each receiving water name, its total watershed area, the percent of the total watershed area that is in the Permittee's jurisdiction, and the findings of the stormwater management influence assessment for each basin. A map of the delineated basins with references will be included in the watershed inventory table.
  - Identify which basins are expected to have a relatively low Stormwater Management influence for SMAP.
- Implement a prioritization method for determining which receiving waters will receive the most benefit from implementation of stormwater facility retrofits, tailored implementation of SWMP actions, and other land/development management actions.
- Document the prioritized and ranked list of receiving waters by June 30, 2022.
  - Document the priority ranking process used to identify high priority receiving waters. Existing local watershed management plan(s) can be used as source(s) of information or rationale for prioritization
  - Identify high priority catchment area(s) for focus of the Stormwater Management Action Plan (SMAP)
- Develop at least one SMAP for a high priority catchment area from above that identifies the following
  - Description of stormwater retrofits needed for the area, including the BMP types and preferred locations.
  - Land management/development strategies and/or actions identified for water quality management.
  - Targeted, enhanced, or customized implementation of stormwater management actions related to permit section within S5
  - Identification of changes needed to local long-range plans to address SMAP priorities if applicable
  - Proposed implantation schedule and budget source for short-term and long-term actions.
  - A process and schedule to provide future assessment and feedback to improve the planning process and implementation of procedure or projects.

1.2 Current Activities

- Maintain requirements for LID Principles and LID BMPs in development related documents

1.3 Planned Activities

The City has a stormwater planning program to inform and assist in the development of policies and strategies as water quality management tools to protect receiving waters which maintains compliance with the performance measures of the Permit (2019-2024). Actions recommended for continued compliance heading into 2020 include:

- Assess questions for the Stormwater Planning Annual Report

Table 1-1 is the work plan for the 2020 SWMP Planning activities.

Table 1-1. 2020 Stormwater Planning			
Task ID #	**Task Description**	**Target Date**	**Notes**
PLAN-1	Convene an interdisciplinary team to improve response to Stormwater Permit	July 2020	Permit S5.C.1.a
PLAN-2	Begin assessing questions for the Stormwater Planning Annual Report	December 2020	Permit S5.C.1.b

Section 2 - Public Education and Outreach

This section describes Permit requirements related to Public Education and Outreach (E&O), lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

2.1 Permit Requirements

The Permit (Section S5.C.2) requires the City to:

- Implement an E&O program designed to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts and encourage the public to participate in stewardship activities. The program shall be designed to educate target audiences (e.g., the general public, businesses, homeowners, students, developers, engineers, contractors, etc.) about important stormwater topics and provide specific actions they can take to minimize the problem.
- Effect behavior change by selecting at least one target audience and one BMP.
- The target audience can be residents, landscapers, property managers/owners, developers, school age children, or businesses (including home-based or mobile businesses)
- BMPs:
    - Use and storage of: pesticides, fertilizers, and/or other household chemicals.
    - Use and storage of: automotive chemicals, hazardous cleaning supplies, carwash soaps, and/or other hazardous materials.
    - Prevention of illicit discharges
    - Yard care techniques protective of water quality.
    - Carpet cleaning.
    - Repair and maintenance BMPs for: vehicles, equipment, and/or home/buildings.
    - Pet waste management and disposal.
    - LID Principles and LID BMPs.

- Stormwater facility maintenance, including LID facilities.
- Dumpster and trash compactor maintenance.
- Litter and debris prevention.
- Sediment and erosion control.
- (Audience specific) Source control BMPs (refer S5.C.8)
- (Audience specific) Locally-important, municipal stormwater-related subject area.

- Conduct an evaluation of the effectiveness of an ongoing behavior change campaign by July 1, 2020.
- From the evaluation document the lessons learned and make recommendations to use Social Marketing techniques to progress the behavior change by following one of these options
    - Develop a strategy and schedule to more effectively implement the existing campaign; or
    - Develop a strategy and schedule to expand the existing campaign to a new target audience or BMPs; or
    - Develop a strategy and schedule for a new target audience and BMP behavior change campaign
- Implement strategy from previous step by April 1, 2021.
- Create stewardship opportunities to encourage participation in activities such as stream teams, storm drain marking, volunteer monitoring, riparian plantings, and education activities.
- Track and maintain records of Public E&O activities.

The Permit (Appendix 2 Total Maximum Daily Load Requirements) requires the City to:

- Develop a public education and outreach involvement plan that targets the reduction of fecal coliform pollution by increasing public awareness and effecting behavior change. The plan includes stated goals, target audiences, messages, possible formats as well as distribution and evaluation methods. The plan shall be implemented prior to the expiration of the permit and include the following elements:
    - Targeting of the residents of the three high priority water bodies identified in the 2007-2012 NPDES permit.
    - Use mailings, door hangers or similar outreach tools.
    - Reach 4th through 6th grade students.
- Continue program which notifies residents, in a timely manner, when bacteria pollution that poses a public health concern (such as a wastewater overflow) reaches the MS4.
- Conduct two public education surveys gauging resident's knowledge of the sources of bacteria and prevention of bacteria pollution. One survey should measure the knowledge prior to outreach and the other their knowledge after outreach.
- Continue to work cooperatively with the Grays Harbor Stream Team.
- Maintain pet waste dispenser units and explanatory signage in public areas with dog use.

- Maintain an inventory of sources that have the potential for bacteria runoff such as manure-composting facilities, stables, kennels
    - Send annual letters outlining compliance requirements to owners of the above facilities
    - Maintain a resource webpage on the City website

2.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City conducts numerous education and outreach activities that address stormwater management and directly target the general public, residents/homeowners, businesses, developers, contractors, engineers, and industries. These activities include but are not limited to:
    - Car wash kits for fundraiser carwashes and related outreach and education.
    - Storm drain marking of public storm drains.
    - Construction surface water pollution prevention plan technical assistance.
    - Education and outreach at public festivals.
    - Partnering with the GH Stream Team.
    - Stormwater maintenance and BMPs technical outreach through the municipal stormwater operations and maintenance.
    - Public E&O on hazards associated with illicit discharges.
- Distribute stormwater educational material, focused on LID Principles, to local engineers, contractors, and developers.

2.3 Planned Activities

The City has an education and outreach program which maintains compliance with the performance measures of the Permit (2019-2024). Actions recommended for continued compliance heading into 2020 include:

- Collaborating with other NPDES municipalities to identify appropriate program evaluation techniques.
- Update the target audience for building awareness to school age children (previous target audience engineers, contractors, and developers).
- Refine the current process to evaluate understanding and adoption of target behaviors and use the measurements to direct future E&O efforts.
- Contract with the Grays Harbor Stream to provide public outreach including door hangers, information booths at festivals, and pub talks.
- Refine the E&O program as needed to address Permit elements more effectively.
- Website based education for City of Aberdeen citizens.

Table 2-1 is the work plan for the 2020 SWMP Public E&O activities.

Table 2-1. 2020 Education and Outreach Work Plan			
Task ID #	**Task Description**	**Target Date**	**Notes**
EDUC-1	Schedule and conduct public hearing for the 2020 SWMP	February 2020	Coordinate with regularly scheduled February City Council Meeting
EDUC-2	Update Stormwater page of the City website	March 2020	Upload the 2020 SWMP, 2019 Annual Report, and stormwater education material
EDUC-3	Provide education opportunities for local 5th Grade Students	Feb-June 2020	Stormwater Pollution Awareness
EDUC-4	Community Outreach – SPLASH Festival, and Aberdeen Sunday Market	July 2020	Illicit Discharge, Pet Waste, Source Control BMPs
EDUC-5	Provide field trips to Waste Treatment plant for 6th Grade Students	Feb-June 2020	Stormwater Pollution Awareness
EDUC-6	Pub Talks	Apr –Nov 2020	Discuss LID topics
EDUC-7	Educational Utility Bill Inserts	Quarterly	Fecal Coliform/Illicit Discharge, Landscaping Waste, Erosion Control/Source Control BMPs, Low Impact Development
EDUC-8	Outreach for Contractors, Developers, Engineers, etc.	April & Nov 2020	Discuss Development Pressure on Stormwater Health

Section 3 - Public Involvement and Participation

This section describes Permit requirements related to Public Involvement and Participation, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2013-19 Permit.

3.1 Permit Requirements

The Permit (Section S5.C.3) requires the City to:

- Provide ongoing opportunities for Public Involvement and Participation through advisory boards and commissions, public hearings, and watershed committees; participation in developing rate structures and budgets; or other similar activities. The public must be able to participate in the decision-making processes involving the development, implementation, and update of the SMAP and SWMP.
- Make the SWMP Plan and Annual Compliance Report available to the public, including posting on the City's Web site. Make other documents required to be submitted to Ecology in response to permit conditions available to the public.

3.2 Current Activities

The City provides ongoing opportunities for public involvement and participation and takes comments and suggestions relating to the development and implementation of the SWMP. The City will continue to provide these opportunities to remain in compliance with the 2019-24 Permit. The following is a partial list of public involvement and participation opportunities that have been provided:

- Numerous presentations have been made to the City council about a variety of stormwater issues. Aberdeen is unique in that the City Council consists of 12 members who are elected from 6 wards throughout the City. Due to size and geographic distribution of our City council it is a much broader representation of the citizens of our community than would be found in a typical city. Also at each council meeting there are representatives from two local radio stations and the local newspaper, as a result whatever is reported to the council is often repeated through the news media to the general population.
- The City advertises and conducts a public hearing to give citizens an opportunity to comment on the 2020 Stormwater Management Plan.
- The City of Aberdeen will submit the updated 2020 SWMP and 2019 Annual Report to Ecology prior to the March 31, 2020 deadline and post both on the Stormwater page of the City of Aberdeen website prior to May 31, 2020. The public is encouraged to comment in person at a public hearing or through email on the stormwater page.
- The City of Aberdeen works cooperatively with the Grays Harbor Stream Team and participates in 4 organized stream cleaning stewardship opportunities per year where the City supports volunteers with labor, equipment, supplies, trash disposal, and organization.
- The City partners with the Grays Harbor Stream Team and CleanStreamsandMemes to provide assistance with debris haul off and equipment needs when requested.
- City Sponsored Watershed Cleanups
    - Fry Creek
    - Alder Creek
    - Shannon Slough
    - Wilson Creek

3.3 Planned Activities

Public involvement can promote awareness of and foster a sense of responsibility for the health of the affected watersheds. The City of Aberdeen 2020 SWMP includes ongoing opportunities for public involvement and participation. Actions recommended for continued compliance heading into 2020 include:

- Continue to provide the opportunity for public comment on the SWMP through public hearing.
- Post the 2020 SWMP and 2019 Annual Report on the City website after it has been submitted to the Washington State Department of Ecology.

- Encourage input on the SWMP and stormwater outreach program through public hearing, online advertisement and participation in the Grays Harbor Stream Team.
- Solicit general stormwater comments, concerns, and suggestions at all scheduled community outreach events and activities.
- Contract with Grays Harbor Stream Team to provide volunteer opportunities for students and general population.
- Continued participation in the Grays Harbor Stream Team with stewardship events in 2020.

Table 3-1 is the work plan for the 2020 SWMP Public Involvement and Participation Work Plan.

Table 3-1. 2020 Public Involvement and Participation Work Plan

Task ID #	Task Description	Target Date	Notes
PIP-1	Schedule, advertise, and conduct public hearing for the 2020 SWMP	February 2020	Coordinate with regularly scheduled February City Council Meeting
PIP-2	Fry Creek Cleanup Event	May 2020	City sponsored community creek cleanup.
PIP-3	Alder Creek Cleanup Event	October 2020	City sponsored community creek cleanup.
PIP-4	Shannon Slough Cleanup Event	July 2020	City sponsored community creek cleanup.
PIP-5	Wilson Creek Cleanup Event	August 2020	City sponsored community creek cleanup.
PIP-6	Continued partnering with GH Stream Team and other organizations to foster public involvement	Ongoing	Provide refuse disposal, partnership, equipment, technical guidance, etc…

Section 4 – MS4 Mapping and Documentation

This section describes the Permit requirements for MS4 Mapping and Documentation lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

4.1Permit Requirements

The Permit (Section S5.C.4) requires the City to:

- Maintain a storm sewer system map that includes stormwater system information identified in the Permit

- Known MS4 outfalls and discharge points
- Receiving water, other than groundwater
- Stormwater treatment and flow control BMPs/facilities owned or operated by the City
- Geographic areas served by the City's MS4 that do not discharge stormwater to surface waters
- Tributary conveyances to all known outfalls and discharge points with a 24 inch nominal or larger diameter or equivalent for non-pipe systems.
- Connections between the MS4 owned and operated by the City and other municipalities or public entities.
- All connections to the MS4 authorized or allowed by the City after February 16, 2007

- The City shall begin mapping the size and material for all known MS4 outfalls during normal course of business no later than January 1, 2020. All known connections from the MS4 to privately owned stormwater systems shall be mapped later than August 1, 2023.
- The mapping shall be in electronic format no later than August 1, 2021 with fully described mapping standards.
- The City shall make available to Ecology, upon request, maps depicting the requirements of section 4 to the extent consistent with national security laws. To the extent appropriate, the City shall provide mapping information to federally recognized Indian Tribes, municipalities, and other Permittees for a reasonable fee.

4.2 Current Activities

The City maintains GIS mapping software of City utilities including the MS4. The City will continue to update these maps to remain in compliance with the 2019-24 Permit. The following is a partial list of mapping and documentation activities that are currently being performed:

- The City maintains a map of the MS4 in ArcGIS (a geographic information system software) that meets the requirements of section S5.C.4 of the Phase II Permit. The map is updated with new facilities or corrected for inconsistencies based on field verification.

4.3 Planned Activities

- The City will update the GIS mapping as changes to infrastructure are made or when correction are needed based on field inspections.

Table 4-1 is the work plan for the 2020 MS4 Mapping and Documenation Work Plan.

Table 4-1. 2020 MS4 Mapping and Documentation Work Plan			
Task ID #	**Task Description**	**Target Date**	**Notes**
MMD-1	Update MS4 map as corrections are needed due to field inspections	Ongoing	Permit S5.C.4.a & b

Section 5 - Illicit Discharge Detection and Elimination

This section describes the Permit requirements for illicit discharge detection and elimination (IDDE), lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

5.1Permit Requirements

The Permit (Section S5.C.5) requires the City to:

- Maintain procedures for reporting and correcting or removing illicit connection, spills and other illicit discharges when they are suspected or identified.
- Illicit connections and illicit discharges must be identified through, but not limited to: field screening, inspections, complaint reports, construction inspections, maintenance inspections, source control inspections, and/or monitoring information.
- Inform public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.
- Implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the City's MS4 to the maxim extent allowable under state and federal law. (AMC 13.70.200)
- May allow the following discharges of non-stormwater if the following conditions are met.
    - Discharges from potable water sources that are dechlorinated to less than 0.1 ppm, pH adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4.
    - Discharges from lawn watering and other irrigation runoff. These discharges shall be minimized though, at a minimum, public education activities and water conservation efforts.
    - Discharges from swimming pools, spas, and hot tubs that are dechlorinated to less than 0.1 ppm total residual chlorine, pH adjusted and re-oxygenized if necessary, volumetrically and velocity controlled, and thermally controlled. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.

- Street and sidewalk wash water used to control dust and routine external building wash down that does not include detergents. These discharges shall be minimized though, at a minimum, public education activities and water conservation efforts.
- Other discharges shall be in compliance with the requirements of a pollution prevention plan reviewed by the City, which addresses control of such discharges.

- The City shall further address any allowed category of discharges if those discharges are identified as significant sources of pollutants to the waters of the State.
- The ordinance or other regulatory mechanism shall include escalating enforcement procedures and actions.
- Implement an ongoing program designed to detect and identify non-stormwater discharges and illicit connections into the City's MS4. The program shall include the following:
  - Procedures for conducting investigations of the City's MS4, including field screening and methods for identifying potential sources. Field screening shall complete 12% of the MS4 each year.
  - Publicly list and publicize a hotline or telephone number for public reporting of spill and other illicit discharges.
  - Train field staff who might come in contact with or otherwise observe an illicit discharge and/or illicit connection to the MS4 on the identification of an illicit discharge or connection and the proper procedure for reporting and responding to the illicit discharge and/or connection. Follow up training as procedures change or as necessary. The City shall document and maintain records of the training provided.
- Implement an ongoing program designed to address illicit discharges, including spills and illicit connections, into the City's MS4. The program shall include:
  - Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharge found by or reported to the City. Procedures shall address the evaluation of whether the discharge must be immediately contained and steps to be taken for containment of the discharge.
  - Procedures for tracing the source of an illicit discharge, including visual inspections, and when necessary, opening manholes, using mobile cameras, collecting and analyzing water samples, and/or other detailed inspection procedures.
  - Procedures for eliminating the discharge, including notification of appropriate authorities (including owners or operators of interconnected MS4s); notification of property owner; technical assistance' follow up inspections; and use of the compliance strategy developed pursuant to S5.C.5.c.iv, including escalating enforcement and legal actions if the discharge is not eliminated.
  - Compliance with the above provisions shall be achieved by meeting the following timelines:
    - Immediately respond to all illicit discharges, including spills, which are determined to constitute a threat to human health, welfare, or the environment.
    - Investigate (or refer to the appropriate agency with the authority to act) within 7 days, on average,

    - Initiate an investigation within 21 days of any report or discovery of a suspected illicit connection to determine the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection.
    - Upon confirmation of an illicit connection, use the compliance strategy in a documented effort to eliminate the illicit connection within 6 months. All known illicit connections to the MS4 shall be eliminated.

- The City shall train staff who are responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills, and illicit connections, to conduct these activities. Follow up training shall be provided as needed to address changes in procedures, techniques, requirements or staffing. The City shall document and maintain records of the training provided and the staff trained.
- The City shall track and maintain records of the activities conducted to meet the requirements of S5.C.5. In the Annual Report, each permittee shall submit data for the illicit discharges, spills, and illicit connections including those that were found by, reported to, or investigated by the City during the previous calendar year.

The Permit (Appendix 2 Total Maximum Daily Load Requirements) requires the City to:

- Install and maintain pet waste dispenser units and explanatory signage in public areas with dog use.
- Maintain and inventory of sources that have potential for bacteria runoff such as manure- composting facilities, stables, kennels.
    - Use the City's targeted manure management educational plan for such facility owners. Send one letter annually that outlines compliance requirements
    - Maintain a resource webpage on the City's website.
    - Submit a summary of actions completed with each annual report
- Designate areas within the MS4 that discharge to points 501-ABDIV, 510-MST & 514-HST as high priority areas for illicit discharge detection and elimination efforts.

5.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City reviews and updates the IDDE program annually to ensure consistent citywide implementation of the Permit requirements.
- The City amends city codes, SOPs, and construction standards as needed in order to implement the Permit's illicit discharge and enforcement requirements.
- The City continues the stormwater outfall illicit discharge screening and source control program requirements. This includes performing a 100% storm drainage outfall reconnaissance inventory annually.
- The City prioritizes receiving waters for inspection, and implementing field screening and source control activities for prioritized receiving waters.

- The City continues with illicit discharge awareness and response training program for City staff.
- The City maintains a spill control supply shed for quick access by all City departments.
- The City has a 24-hour illicit discharge response line for public reporting of spills and other illicit discharges (360-537-3393).
- The City maintains an online illicit discharge reporting form on the City's website. (https://www.aberdeenwa.gov/forms.aspx?FID=62)
- The City continues to maintain pet waste dispenser stations.

5.3 Planned Activities

The City has an IDDE program which maintains compliance with the performance measures of the Permit (2019-2024). Actions recommended for continued compliance heading into 2020 include:

- Review and update the IDDE program annually.
- Update IDDE training for all municipal field staff.
- Summarizing IDDE activities and programs for the Compliance Report submittals

Table 5-1 is the work plan for the 2020 SWMP IDDE activities.

Table 5-1. 2020 Illicit Discharge Detection & Elimination Work Plan

Task ID #	Task Description	Target Date	Schedule Notes
IDDE-1	Municipal field staff training on IDDE and Erosion and Sediment Control	Annually May	Coordinate with start of construction season
IDDE-2	Annual IDDE Field Screening of MS4 Outfalls	August 2020	100% Outfall Inspection & Screening
IDDE-3	Review and update City IDDE Program	December 2020	Completed Annually at the end of the year
IDDE-4	Utility Bill Insert (Fecal Coliform/Illicit Discharge)	Late Fall 2020	4th Quarterly Utility Bill Insert
IDDE-5	Utility Bill Insert (Landscape Waste)	Early Spring 2020	2st Quarterly Utility Bill Insert

Section 6 - Controlling Runoff from New Development, Redevelopment, and Construction Sites

This section describes the Permit requirements related to Controlling Runoff from New Development, Redevelopment, and Construction Sites, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

6.1 Permit Requirements

The Permit (Section S5.C.6) requires the City to:

- Implement an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site project.
    - Adopt and make effective a local program, no later than June 30, 2022 that meets the requirements of S5.C.6.b of the Western Washington Phase II Municipal Stormwater Permit.
- Include enforceable mechanisms in the ordinance at a minimum:
    - The minimum requirements, thresholds, and definition in Appendix 1 in the Stormwater Permit.
    - The local requirements shall include the following requirements, limitations, and criteria that, when used to implement the minimum requirements in Appendix 1 will protect water quality, reduce the discharge of pollutants to the MEP, and satisfy the State requirement under Chapter 90-48 RCW to apply AKART prior to discharge
        - Site planning requirements
        - BMP selection criteria
        - BMP design criteria
        - BMP infeasibility criteria
        - LID competing needs criteria
        - BMP limitations
    - The City shall document how the criteria and requirements will protect water quality, reduce the discharge of pollutants to the MEP, and satisfy State AKART requirements
    - OR The City will use the Stormwater Management Manual for Western Washington to determine above
- Shall include a permitting process with the site plan review, inspection, and enforcement capability to meet the standards listed below, for both private and public projects, using qualified personnel. At a minimum, this program shall be applied to all sites that meet the minimum thresholds adopted pursuant to above.
    - Review all stormwater site plans for proposed development activities
    - Inspect, prior to clearing and construction, all permitted development sites that have a high potential for sediment transport as determined through plan review based on definitions and

requirements in Appendix 7 – Determining Construction Site Sediment Damage Potential. (S5.C.6.b.i)

- Inspect all permitted development sites during construction to verify proper installation and maintenance of required erosion and sediment controls. Enforce as necessary based on the inspection.
- The City shall manage maintenance activities to inspect all stormwater treatment and flow control BMPs/facilities, and catch basins, in new residential developments every six months, until 90% of the lots are constructed (or when construction has stopped and the site is fully stabilized), to identify maintenance needs and enforce compliance with maintenance standards as needed.
- Inspect all permitted development sites upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent stormwater facilities. Verify that a maintenance plan is completed and responsibility for maintenance is assigned for stormwater treatment and flow control BMPs/facilities. Enforce as necessary based on inspection.
- Compliance with the inspection requirements, above, shall be determined by the presence and records of an established inspection program designed to inspect all sites. Compliance during this permit term shall be determined by achieving at least 80% of required inspections. The inspection may be combined with other inspections provided they are performed using qualified personnel.
- The program shall include a procedure for keeping records of inspection and enforcement actions by staff, including inspection reports, warning letters, notices of violations, and other enforcement records. Records of maintenance inspections and maintenance activities shall be maintained.
- An enforcement strategy shall be implemented to respond to issues of non-compliance

6.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City implemented an ordinance in 2010 that addresses runoff from new development, redevelopment, and construction site activities.
- The City implemented a Stormwater Quality Program to reduce pollutants in stormwater runoff to the MS4 from new development, redevelopment, and construction site activities. The City applies the program through the Public Works permitting process and uses the Aberdeen municipal code to enforce the requirements.
- The City adopted the most current version of the SWMMWW as the citywide stormwater standard for development, redevelopment, and construction projects.
- The City reviews and amends city codes and standards as needed to meet the Permit requirements for development, redevelopment, and construction stormwater management.

- The City regularly reviews the Public Works permitting process (plan review, inspection, enforcement, and documentation procedures) to check where changes can be made to better address the Permit requirements.
- The City provides ongoing training to staff on new regulations, processes and procedures for the permitting process, inspection and enforcement.
- The City provides a link on the Stormwater page of the City website that directs representatives of proposed new development and redevelopment to Ecology's webpage which contains the "Notice of Intent for Construction Activities" and the "Notice of Intent for Industrial Activity".

6.3 Planned Activities

The City has a Stormwater Quality program which maintains compliance with the performance measures of the Permit (2019-24). Actions recommended for continued compliance heading into 2019 include:

- Review and revise the Stormwater Quality Program to address Permit requirements if needed.
- Continue to review and revise City land use and development-related regulations to incorporate low impact development (LID) principles and BMPs.
- Summarize annual activities for the "Controlling Runoff from New Development, Redevelopment, and Construction Sites" component of the Annual Report.

Table 6-1 is the work plan for the 2020 SWMP activities related to Controlling Run-off from New Development, Redevelopment, and Construction Sites.

Table 6-1. 2020 Controlling Run-off from New Development, Redevelopment, and Construction Sites Work Plan

Task ID #	Task Description	Target Date	Schedule Notes
CTRL-1	Review process and procedures of stormwater treatment and flow control BMP/facility inspections	May 2020	Permit S5.C.6.c
CTRL-2	Review training program for staff whose primary duties are controlling run-off through permitting, plan review, inspection, etc.	June 2020	Permit S5.C.6.e
CTRL-3	Utility Bill Insert (Erosion Control/Source Control BMPs)	January 2020	1st Quarterly Utility Bill Insert
CTRL-4	Utility Bill Insert (Erosion Control)	July 2020	3rd Quarterly Utility Bill Insert

Section 7 - Operations and Maintenance

This section describes the Permit requirements related to Municipal Operations and Maintenance (O&M), lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

7.1 Permit Requirements

The Permit (Section S5.C.7) requires the City to:

- Implement an O&M program with the ultimate goal of preventing or reducing stormwater impacts.
- Implement maintenance standards that are as protective, or more protective, of facility function than those specified in the Stormwater Management Manual for Western Washington (SWMMWW). No later than June 30, 2022 the City shall update their maintenance standards as necessary to meet the following requirements.
    - The purpose of the standard is to determine if maintenance is required. The maintenance standard is not a measure of the facility's required condition at all times between inspections. Exceeding the maintenance standard between inspections and/or maintenance is not a permit violation.
    - Unless there are circumstances beyond the City's control, when an inspection identifies and exceedance of the maintenance standard, maintenance shall be performed:
        - Within 1 year for typical maintenance of facilities, except catch basins.
        - Within 6 months for catch basins/
        - Within 2 years for maintenance that requires capital construction of less than $25,000.
    - Circumstances beyond the City's control include denial or delay of access by property owners, denial or delay of necessary permit approvals, and unexpected reallocations of maintenance staff to perform emergency work. For each exceedance of the required timeframe, the City shall document the circumstances and how they were beyond their control.
- Maintenance of stormwater facilities regulated by the City
    - The program shall include provisions to verify adequate long-term O&M of stormwater treatment and flow control BMPs/facilities that are permitted and constructed pursuant to S.5.C.6.c and shall be maintained in accordance with S5.C.7.a. The provisions shall include.
        - Implementation of an ordinance or other enforceable mechanism that:
            - Clearly identifies the party responsible for maintenance in accordance with maintenance standards established under S5.C.7.a
            - Requires inspection of facilities in accordance with the requirements below
            - Establishes enforcement procedures

- Annual inspections of all stormwater treatment and flow control BMPs/facilities that discharge to the MS4 and were permitted by the City according to S5.C.6.c, including those permitted in accordance with requirements adopted pursuant to the 2007-2019 Ecology municipal stormwater permits, unless there are maintenance records to justify a different frequency.
- The City may reduce the inspection frequency based on maintenance records of double the length of time of the proposed inspection frequency. In the absence of maintenance records, the City may substitute written statements to document a specific less frequent inspection schedule. Written statements shall be based on actual inspection and maintenance experience and shall be certified in accordance with G19 – Certification and Signature
- Compliance with the inspection requirements above shall be determined by the presence and records of an established inspection program designed to inspect all facilities and achieving at least 80% of required inspections.
- The program shall include a procedure for keeping records of inspection and enforcement action by staff, including inspection reports, warning letters, notices of violations, and other enforcement records. Records of maintenance inspections and maintenance activities shall be maintained.

o Maintenance of stormwater facilities owned or operated by the City

- The City shall implement a program to annually inspect all municipally owned or operated stormwater treatment and flow control BMPs/facilities and taking appropriate maintenance actions in accordance with the adopted maintenance standards.
- The City may reduce the inspection frequency based on maintenance records of double the length of time of the proposed inspection frequency. In the absence of maintenance records, the City may substitute written statements to document a specific less frequent inspection schedule. Written statements shall be based on actual inspection and maintenance experience and shall be certified in accordance with G19 – Certification and Signature
- The City shall spot check potentially damaged stormwater treatment and flow control BMPs/facilities after major storm events (24 hour storm event with a 10 year or greater recurrence interval). If spot checks indicate widespread damage/maintenance needs, inspect all stormwater treatment and flow control BMPs/facilities that may be affected. Conduct repairs or take appropriate maintenance action in accordance with maintenance standards established above, based on the results of the inspections.
- The City shall inspect all catch basins and inlets owned or operated by the City every two years. Clean catch basins if the inspection indicates cleaning is needed to comply with maintenance standards established in the Stormwater Management Manual for Western Washington. Decant water shall be disposed of in accordance with Appendix 6 – Street Waste Disposal.
- The following alternatives to the standard approach of inspection all catch basins every two years may be applied to all or portions of the system:

        - The catch basin inspection schedule of every two years may be changed as appropriate to meet the maintenance standards based on maintenance records of double the length of time of the proposed inspection frequency. In the absence of maintenance records for catch basins, the City may substitute written statements to document a specific, less frequent inspection schedule. Written statements shall be based on actual inspection and maintenance experiences and shall be certified in accordance with G19 – Certification and Signature.

        - Inspection every two years may be conducted on a "circuit basis" whereby 25% of catch basins and inlets within each circuit are inspected to identify maintenance needs. Include an inspection of the catch basin immediately upstream of any MS outfall, discharge point, or connection to public or private storm systems, if applicable. Clean all catch basins within a given circuit for which the inspection indicates cleaning is needed to comply with maintenance standards established under S5.C.7.a, above.

        - The City may clean all pipes, ditches, and catch basins and inlets within a circuit once during the permit term. Circuits selected for this alternative must drain to a single point.

    - Compliance with the inspection requirements in S5.C.7.c, above, shall be determined by the presence of an established inspection program achieving at least 95% of required inspections.

- Implement practices, policies, and procedures to reduce stormwater impacts associate with runoff from all lands owned or maintained by the City, and road maintenance activities under the functional control of the City. No Later than December 31, 2022, document the practices, policies, and procedures. Lands owned or maintained by the City include, but not limited to: streets, parking lots, roads, highways, buildings, parks, open space, road right-of-ways, maintenance yards, and stormwater treatment and flow control BMPs/facilities.

    - The following activities shall be addressed:

        - Pipe cleaning, Cleaning of culverts that convey stormwater in ditch systems, Ditch maintenance, Street cleaning, Road repair and resurfacing, including pavement grinding, Snow and ice control, Utility installation, Pavement striping maintenance, Maintaining roadside areas including vegetation management, Dust control, Application of fertilizers, pesticides, and herbicides according to the instructions for their use, including reducing nutrients and pesticides using alternatives that minimize environment impacts, Sediment and erosion control, Landscape maintenance and vegetation disposal, Trash and pet waste management, Building exterior cleaning and maintenance

- Implement an ongoing training program for employees of the City whose primary construction, operations, or maintenance job functions may impact stormwater quality. The training program shall address the importance of protection water quality operation and maintenance standards, inspection procedures, relevant SWPPPs, selection appropriate BMPs, ways to perform their job activities to prevent or minimize impacts to water quality, and procedures for reporting water quality concerns. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. The City

shall document and maintain records of training provided. The staff training records to be kept include dates, activities or course description, and names and position of staff in attendance.

- Implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the City in areas subject to this Permit that are not required to have coverage under the Industrial Stormwater General Permit or another NPDES permit that authorizes stormwater discharges associated with the activity. As necessary update SWPPPs no later than December 31, 2022, to include the following information. At a minimum, the SWPPP shall include:
    - A detailed description of the operational and structural BMPs in use at the facility and a schedule for implementation of additional BMPs when needed. BMPs selected must be consistent with the Stormwater Management Manual for Western Washington, or a Phase I program approved by Ecology. The SWPPP must be updated as needed to maintain relevancy with the facility.
    - At minimum, annual inspections of the facility, including visual observations of discharges, to evaluate the effectiveness of the BMPs, identify maintenance needs, and determine if additional or different BMPSs are needed. The results of these inspections must be documented in an inspection report or check list.
    - An inventory of the materials and equipment stored on-site, and the activities conducted at the facility which may be exposed to precipitation or runoff and could result in stormwater pollution.
    - A site map showing the facility's stormwater drainage, discharge points, and areas of potential pollutant exposure.
    - A plan for preventing and responding to spills at the facility which could result in an illicit discharge
- Maintain records of the activities conducted to meet the requirements of this section.

7.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City has implemented a Municipal Operations and Maintenance (O&M) Program with the ultimate goal of preventing or reducing pollutant runoff from municipal operations.
- The City has adopted and utilizes the maintenance standards specified in the SWMMWW.
- The City will continue to perform the required inspections of all municipally owned or operated permanent stormwater treatment and flow control BMPs/facilities.
- The City performed inspection of all catch basins and inlets owned or operated by the Permittee in 2015, and has been regularly performing inspections of high priority sections of the MS4.
- The City reviews and updates the City crew field manual (Pollution Prevention and Operation and Maintenance for Municipal Field Operations), which was created to implement practices, policies and

procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the City, and road maintenance activities under the functional control of the City.

- The City reviews and updates the municipal facility SWPPP for City owned facilities as needed.
- Continue the training program to provide ongoing citywide pollution prevention training for municipal field staff based on the updated and/or new SOPs developed to reduce stormwater runoff from construction, operation, and maintenance of municipal facilities and lands.

7.3 Planned Actions

The City has a Municipal Operations and Maintenance (O&M) program which maintains compliance with the performance measures of the Permit (2019-24). Actions recommended for continued compliance heading into 2020 include:

- Review and revise the Municipal O&M program as needed
- Review and revise inspection processes and procedures for municipally owned facilities as needed.
- Implement required annual inspections of municipally regulated facilities.
- Continue required annual inspections of municipally owned facilities.
- Review and revise the municipal facility SWPPP as needed.

Table 7-1 is the work plan for the 2020 SWMP O&M for Municipal Operations activities.

Table 7-1. 2020 Municipal Operations & Maintenance Work Plan			
Task ID #	**Task Description**	**Target Date**	**Schedule Notes**
O&M-1	Review and revise the Municipal O&M program as needed	Annually December	Permit S.5.C.7.a
O&M-2	Inspection of regulated permanent stormwater treatment and flow control facilities	Annually	Permit S.5.C.7.b
O&M-3	Inspection of municipally owned or operated permanent stormwater treatment and flow control facilities	Annually	Permit S.5.C.7.c
O&M-4	Spot checks of permanent stormwater treatment and flow control facilities after major storm events	After 24-hr storm with >10 year recurrence	Permit S.5.C.7.c
O&M-5	Continued inspection of catch basins and inlets owned or operated by the City	December 2020	Permit S.5.C.7.d
O&M-6	Schedule training for employees of the City whose primary construction, operations or maintenance job functions may impact stormwater quality.	Annually May	Permit S.5.C.7.g
O&M-7	Review and revise the SWPPP for heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the City	Annually December	Permit S.5.C.7.h

SECTION 8 - Source Control Program for Existing Development

This section describes the Permit requirements related to water quality Source Control Program for Existing Development, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

8.1 Permit Requirements

The Permit (S5.C.8) requires the City to:

- The City shall implement a program to prevent and reduce pollutants in runoff from areas that discharge to the MS4. The program shall include:
    - Application of operational source control BMPs, and necessary, structural source control BMPs or treatment BMPs/facilities, or both to pollution generating sources associated with existing land uses and activities.
    - Inspections of pollutant generating sources at publicly and privately owned institutional, commercial and industrial sites to enforce implementation of required BMPs to control pollution discharging into the MS4.
    - Application and enforcement of local ordinances at sites, identified pursuant to S5.C.8.b.ii, including sites with discharges authorized by a separate NPDES permit. Permittees that are in compliance with the terms of this Permit will not be held liable by Ecology for water quality standard violations or receiving water impacts caused by industries and other Permittees covered, or which should be covered under an NPDES permit issued by Ecology.
    - Practices to reduce polluted runoff from the application of pesticides, herbicides, and fertilizers from the sites identified in the inventory.
- The City shall adopt no later than August 1, 2022 and make effective an ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities described in Appendix 8 of the Western Washington Phase II Municipal Stormwater Permit.
- The City shall, no later than August 1, 2022, establish an inventory that identifies publicly and privately owned institutional, commercial, and industrial sites which have the potential to generate pollutants to the MS4, The inventory shall include:
    - Businesses and/or sites identified based on the presence of activities that are pollutant generating (Appendix 8)
    - Other pollutant generating sources, based on complaint response, such as: home based businesses and multi-family sites.
- No later than January 1, 2023, the City shall implement an inspection program for sites identified in the inventory above
    - All identified sites with a business address shall be provided information about activities that may generate pollutants and the source control requirements for those activities.
    - The City shall annually complete the number of inspection equal to 20% of the businesses and/or sites listed in their source control inventory to assess BMP effectiveness and compliance with source control requirements. Follow up compliance inspections at the same site may count towards the 20% inspection rate. The City may select which sites to inspect each year and is not required to inspect 100% of sites over a 5-year period. Sites may be prioritized based on their land use category, potential for pollution generation, proximity to receiving waters, or to address an identified pollution problem within a specific geographic area or sub-basin.
    - The City shall inspect 100% of sites identified through credible complaints

- The City may count inspections conducted based on complaints, or when the property owner denies entry to the 20% inspection rate.

- No later than January 1, 2023, the City shall implement a progressive enforcement policy that requires sites to comply with stormwater requirements within a reasonable time period as specified below:
  - If the City determines, through inspections or otherwise, that a site has failed to adequately implement required BMPS, the City shall take appropriate follow-up actions, which may include phone calls, reminder letters, emails, or follow-up inspections.
  - When the City determines that a site has failed to adequately implement BMPs after a follow-up inspection, the City shall take enforcement action as established through authority in its municipal codes or ordinances, or through the judicial system.
  - The City shall maintain records, including documentation of each site visit, inspection reports, warning letters, notices of violations, and other enforcement records, demonstration an effort to bring sites into compliance. The City shall also maintain records of sites that are not inspection because the property owner denies entry.
  - The City may refer non-emergency violations of local ordinances to Ecology, provided the City also makes a documented effort of progressive enforcement. At a minimum the City's enforcement effort shall include documentation of inspection and warning letters or notices of violation

- The City shall train staff who are responsible for implementing the source control program to conduct these activities. The ongoing training program shall cover the legal authority for source control, source control BMPs and their proper application, inspection protocols, lessons learned, typical cases, and enforcement procedures. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staff. The City shall document and maintain records of the training provided and the staff trained.

8.2 Current Activities

The City currently is developing programs in order to meet the Permit requirements. The City will begin implementing these programs and activities to remain in compliance with the 2019-24 Permit.

8.3 Planned Actions

The City is developing a source control program for existing development which will maintain compliance with the performance measures of the Permit (2019-24). Actions recommended for continued compliance heading into 2020 include:

- Develop an inventory of sites that have the potential to generate pollutants according to guidelines in Appendix 8 of the Western Washington Phase II Municipal Stormwater Permit.

- Notify affected sites that ordinances are being developed to control stormwater contamination at their locations.

- Begin to develop an ordinance requiring source control BMPs for pollutant generating sources.

Table 8-1 is the work plan for the 2020 SWMP Source Control Program for Existing Development activities.

Table 8-1. 2020 Source Control Program for Existing Development Plan			
Task ID #	**Task Description**	**Target Date**	**Schedule Notes**
SCED-1	Build an inventory of sites that have potential to generate pollutants	December 2020	Permit S.5.C.8.b.ii
SCED-2	Notify sites that an ordinance is being developed to control stormwater pollution	December 2020	Notify businesses of upcoming environmental requirements
SCED-3	Begin development of new ordinance	Ongoing	Permit S.5.C.8.b

SECTION 9 – Compliance with Total Maximum Daily Load Requirements

This section describes the Permit requirements related to Compliance with Total Maximum Daily Load Requirements, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

9.1 Permit Requirements

The Permit (S7) requires the City to:

- The City shall implement a program to maintain compliance with Total Maximum Daily Load (TMDL) requirements. The program shall include:
  - The City shall comply with the specific requirements identified in Appendix 2 of the Western Washington Phase II Stormwater Permit. Records shall be kept for all actions required by this Permit that are relevant to applicable TMDLs within the City's jurisdiction.
  - The City shall enforce its regulatory mechanism to control pet waste
  - Designate areas discharging via MS4 to the following discharge points: 501-ABDIV, 510-MST, and 514-HST as high priority areas for illicit discharge detection and elimination efforts.
    - Complete field screening and implement the schedules and priority area for illicit discharge detection and elimination field screening identified in section 5 of this plan. Investigation must include activities for both the dry season (May through October) and the wet season (November through April).

- Conduct twice monthly wet weather sampling of the discharge points 501-ABDIV, 510-MST, and 514-HST to determine if specific discharges from Aberdeen's MS4 exceed the water quality criteria for fecal coliform bacteria.
    - Data shall be collected for two wet seasons.
    - Data shall be collected in accordance with an Ecology-approved QAPP.
    - Samples must be analyzed using an Ecology accredited lab.
    - If sampling results indicate potential illicit discharges, conduct an investigation in accordance with S5.C.5 – *Illicit Discharge Detection and Elimination* of the Western Washington Phase II Permit.
    - Data shall be submitted to Ecology in an approved format with the annual reports.

9.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City conducts annual inspections of 100% of MS4 outfalls
- The City conducts twice monthly wet weather sampling at the high priority discharge points.

9.3 Planned Activities

The City currently has a TMDL program that meets the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. Actions recommended for continued compliance heading into 2020 include:

- Develop TMDL inspection reports

Table 9-1 is the work plan for the 2020 SWMP Total Daily Maximum Load activities.

Table 9-1. 2020 Total Daily Maximum Load Plan

Task ID #	Task Description	Target Date	Schedule Notes
TDML-1	Annual IDDE Field Screening of MS4 Outfalls	August 2020	
TDML-2	Wet weather sampling of high priority outfalls	Twice/month (Nov - Apr)	

SECTION 10 – Monitoring and Assessment

This section describes the Permit requirements related to water quality Monitoring and Assessment, lists the continuing and/or current programs and activities that meet Permit requirements, and identifies the planned activities recommended for continued compliance with the current 2019-24 Permit.

10.1 Permit Requirements

The Permit (Section S8) requires the City to:

- Either, conduct and provide stormwater monitoring, studies, and analysis in the Annual Report, or, take part in the Stormwater Action Monitoring (SAM), previously known as Regional Stormwater Monitoring Program (RSMP).
- Pay into a collective fund to implement the SAM Effectiveness and Source Identification Studies due to Ecology annually beginning August 15, 2020. (Aberdeen cost per Ecology: $5060)
- The City shall provide information as requested for effectiveness and source identification studies that are under contract with Ecology as active Stormwater Action Monitoring (SAM) projects.

The Permit (Appendix 2 Total Maximum Daily Load Requirements) requires the City to:

- Enforce the City's regulatory mechanism to control pet waste.
- Design and implement a program which notifies residents, in a timely manner, when bacteria pollution that poses a public health concern reaches the MS4.
- Designate areas within the MS4 that discharge to points 501, 510 & 514 as high priority areas for illicit discharge detection and elimination efforts.
- Complete field screening and implement the schedules and priority area for illicit discharge detection and elimination field screening. Investigations must include activities for both the dry season (May through October) and the wet season (November through April)
- Conduct twice monthly wet weather sampling of the discharge points 501, 510 & 514 to determine if specific discharges from Aberdeen MS4 exceed the water quality criteria for fecal coliform bacteria.

10.2 Current Activities

The City currently implements activities and programs that meet the Permit requirements. The City will continue to implement these programs and activities to remain in compliance with the 2019-24 Permit. The current compliance activities associated with the above Permit requirements include:

- The City annually pays into a collective fund to comply with monitoring requirements of the Permit.
- Review QAPP for the sampling and testing component of the permit.
- The City conducts twice monthly wet weather sampling at the pre-determined discharge points.
- The City conducts sampling or testing required for characterizing illicit discharges pursuant to the Permit's IDDE program conditions.

- The City reviews water quality monitoring data and/or reports conducted by or for the City to determine if potential water quality violations are identified.
- The City reports potential water quality violations to Ecology within 30 days of becoming aware of the potential violations per the Permit's Compliance with Standards condition S4.F.

10.3 Planned Activities

The City has a Monitoring and Assessment program which maintains compliance with the performance measures of the Permit (2019-24). Actions recommended for continued compliance heading into 2020 include:

- Make payments to collective fund to implement effectiveness and source identification studies
- Continue to conduct sampling and testing required for characterizing illicit discharges pursuant to the Permit's IDDE program conditions.
- Continue to conduct twice monthly wet weather sampling at the pre-determined discharge points for two wet seasons in accordance with the QAPP.
- Submit collected data for the Compliance Report submittals.

Table 10-1 is the work plan for the 2020 SWMP Monitoring and Assessment activities.

Table 10-1. 2020 Monitoring and Assessment Plan

Task ID #	Task Description	Target Date	Schedule Notes
M&A-1	Make payment to collective fund for studies	August 2020	Permit S8.B.2
M&A-2	Conduct sampling and testing required by the IDDE program and QAPP	Ongoing	Permit S8.C.1.c

Abbreviations and Definitions

The following definitions and abbreviations are taken directly from the Phase II Permit or from this SWMP Plan and are reproduced here for the reader's convenience.

40 CFR means Title 40 of the Code of Federal Regulations, which is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

AKART means All Known, Available, and Reasonable methods of prevention, control and Treatment. See also State Water Pollution Control Act, Chapter 90.48.010 RCW and Chapter 90.48.520 RCW.

All Known, Available and Reasonable Methods of Prevention, Control and Treatment (AKART) refers to the State Water Pollution Control Act, Chapter 90.48.010 RCW and Chapter 90.48.520 RCW.

Applicable TMDL means a TMDL which has been approved by EPA on or before the issuance date of this Permit, or prior to the date that Ecology issues coverage under this Permit, whichever is later.

Beneficial Uses means uses of waters of the State, which include but are not limited to use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the State.

Best Management Practices are the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

BMP means Best Management Practice.

Bypass means the diversion of stormwater from any portion of a stormwater treatment facility.

Circuit means a portion of a MS4 discharging to a single point or serving a discrete area determined by traffic volumes, land use, topography or the configuration of the MS4.

Component or **Program Component** means an element of the Stormwater Management Program listed in S5 -*Stormwater Management Program for Cities, Towns, and Counties*, or S6–S*tormwater Management Program for Secondary Permittees*, or S7 – *Compliance with Total Maximum Daily Load Requirements*, or S8 – *Monitoring and Assessment*, of this Permit.

Community-based social marketing is a social marketing methodology. It employs a systematic approach intended to change the behavior of communities to reduce their impact on the environment. Realizing that providing information is usually not sufficient to initiate behavior change, community-based social marketing uses tools and findings from social psychology to discover the perceived barriers to behavior change and ways of overcoming these barriers.

Conveyance System means that portion of the municipal separate storm sewer system designed or used for conveying stormwater.

Co-Permittee means an owner or operator of an MS4 which is in a cooperative agreement with at least one other applicant for coverage under this Permit. A Co-Permittee is an owner or operator of a regulated MS4 located within or in proximity to another regulated MS4. A Co-Permittee is only responsible for permit conditions relating to discharges from the MS4 the Co-Permittee owns or operates. See also 40 CFR 122.26(b)(1).

CWA means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95576, Pub. L. (6-483 and Pub. L. 97-117, 33 U.S.C. 1251 *et seq*.).

Director means the Director of the Washington State Department of Ecology, or an authorized representative.

Discharge Point means the location where a discharge leaves the Permittee's MS4 through the Permittee's MS4 facilities/BMPs designed to infiltrate.

Entity means a governmental body, or a public or private organization.

EPA means the U.S. Environmental Protection Agency.

Fully Stabilized means the establishment of a permanent vegetative cover, or equivalent permanent stabilization measures (such as riprap, gabions or geotextiles) which prevents erosion.

General Permit means a permit which covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

Groundwater means water in a saturated zone or stratum beneath the surface of the land or below a surface water body. Refer to Chapter 173-200 WAC.

Hazardous Substance means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or WAC 173-303-100.

Heavy Equipment Maintenance or Storage Yard means an uncovered area where any heavy equipment, such as mowing equipment, excavators, dump trucks, backhoes, or bulldozers are washed or maintained, or where at least five pieces of heavy equipment are stored on a long-term basis.

Highway means a main public road connecting towns and cities.

Hydraulically Near means runoff from the site discharges to the sensitive feature without significant natural attenuation of flows that allows for suspended solids removal. See Appendix 7 Determining Construction Site Sediment Damage Potential for a more detailed definition.

Hyperchlorinated means water that contains more than 10 mg/Liter chlorine.

Illicit Connection means any infrastructure connection to the MS4 that is not intended, permitted or used for collecting and conveying stormwater or non-stormwater discharges allowed as specified in this Permit (S5.C.5 and S6.D.3). Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the MS4.

Illicit Discharge means any discharge to a MS4 that is not composed entirely of stormwater or of nonstormwater discharges allowed as specified in this Permit (S5.C.5 and S6.D.3).

Impervious Surface means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or stormwater areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

Land Disturbing Activity means any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

LID means Low Impact Development.

LID BMP means Low Impact Development Best Management Practices.

LID Principles means land use management strategies that emphasize conservation, use of on-site natural features, and site planning to minimize impervious surfaces, native vegetation loss, and stormwater runoff.

Low Impact Development (LID) means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

Low Impact Development Best Management Practices (LID BMP) means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water re-use.

Material Storage Facilities means an uncovered area where bulk materials (liquid, solid, granular, etc.) are stored in piles, barrels, tanks, bins, crates, or other means.

Maximum Extent Practicable refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.

MEP means Maximum Extent Practicable.

MS4 means Municipal Separate Storm Sewer System.

Municipal Separate Storm Sewer System means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

(i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of Washington State.
(ii) Designed or used for collecting or conveying stormwater.

(iii) Which is not a combined sewer;

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.; and
(v) Which is defined as "large" or "medium" or "small" or otherwise designated by Ecology

Pursuant to 40 CFR 122.26. **National Pollutant Discharge Elimination System** means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the State from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

Native Vegetation means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

New Development means land disturbing activities, including Class IV General Forest Practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development. Refer to Appendix 1 for a definition of hard surfaces.

New Permittee means a city, town, or county that is subject to the *Western Washington Municipal Stormwater General Permit* and was not subject to the permit prior to July 1, 2019.

New Secondary Permittee means a Secondary Permittee that is covered under a municipal stormwater general permit and was not covered by the permit prior to July 1, 2019.

NOI means Notice of Intent.

Notice of Intent (NOI) means the application for, or a request for coverage under, a General Permit pursuant to WAC 173-226-200.

Notice of Intent for Construction Activity means the application form for coverage under the *Construction Stormwater General Permit.*

Notice of Intent for Industrial Activity means the application form for coverage under the *Industrial Stormwater General Permit.*

NPDES means National Pollutant Discharge Elimination System.

Outfall means a point source as defined by 40 CFR 122.2 at the point where a discharge leaves the Permittee's MS4 and enters a surface receiving waterbody or surface receiving waters. Outfall does not include pipes, tunnels, or other conveyances which connect segments of the same stream or other surface waters and are used to convey primarily surface waters (i.e., culverts).

Overburdened Community means minority, low-income, tribal, or indigenous populations or geographic locations in Washington State that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

Permittee unless otherwise noted, the term "Permittee" includes city, town, or county Permittee, Co-Permittee, New Permittee, Secondary Permittee, and New Secondary Permittee.

Physically Interconnected means that one MS4 is connected to another storm sewer system in such a way that it allows for direct discharges to the second system. For example, the roads with drainage systems and municipal streets of one entity are physically connected directly to a storm sewer system belonging to another entity.

Project site means that portion of a property, properties, or right-of-ways subject to land disturbing activities, new hard surfaces, or replaced hard surfaces. Refer to Appendix 1 for a definition of hard surfaces.

QAPP means Quality Assurance Project Plan.

Qualified Personnel means someone who has had professional training in the aspects of stormwater management for which they are responsible and are under the functional control of the Permittee. Qualified Personnel may be staff members, contractors, or volunteers.

Quality Assurance Project Plan means a document that describes the objectives of an environmental study and the procedures to be followed to achieve those objectives.

RCW means the Revised Code of Washington State.

Receiving Waterbody or **Receiving Waters** means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which a MS4 discharges.

Redevelopment means, on a site that is already substantially developed (i.e., has 35% or more of existing hard surface coverage), the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities. Refer to Appendix 1 for a definition of hard surfaces.

Regulated Small Municipal Separate Storm Sewer System means a Municipal Separate Storm Sewer System which is automatically designated for inclusion in the Phase II stormwater permitting program by its location within an Urbanized Area, or by designation by Ecology and is not eligible for a waiver or

exemption under S1.C.

Runoff is water that travels across the land surface and discharges to water bodies either directly or through a collection and conveyance system. See also "***Stormwater***."

SAM means Stormwater Action Monitoring

Secondary Permittee is an operator of a regulated small MS4 which is not a city, town or county. Secondary Permittees include special purpose districts and other public entities that meet the criteria in S1.B.

Sediment/Erosion-Sensitive Feature means an area subject to significant degradation due to the effect of construction runoff, or areas requiring special protection to prevent erosion. See Appendix 7 Determining Construction Site Sediment Damage Potential for a more detailed definition.

Shared Water Bodies means water bodies, including downstream segments, lakes and estuaries that receive discharges from more than one Permittee.

Significant Contributor means a discharge that contributes a loading of pollutants considered to be sufficient to cause or exacerbate the deterioration of receiving water quality or instream habitat conditions.

Small Municipal Separate Storm Sewer System means an MS4 that is not defined as "large" or "medium" pursuant to 40 CFR 122.26(b)(4) & (7) or designated under 40 CFR 122.26 (a)(1)(v).

Source Control BMP means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. The *SWMMWW* separates source control BMPs into two types. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

Stormwater means runoff during and following precipitation and snowmelt events, including surface runoff, drainage or interflow.

Stormwater Action Monitoring (SAM) is the regional stormwater monitoring program for Western Washington. This means, for all of Western Washington, a stormwater-focused monitoring and assessment program consisting of these components: status and trends monitoring in small streams and marine nearshore areas, stormwater management program effectiveness studies, and source identification projects. The priorities and scope for SAM are set by a formal stakeholder group that selects the studies and oversees the program's administration.

Stormwater Associated with Industrial and Construction Activity means the discharge from any conveyance which is used for collecting and conveying stormwater, which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant, or associated with clearing, grading and/or excavation, and is required to have an NPDES permit in accordance with 40 CFR 122.26.

Stormwater facility retrofits means both: projects that retrofit existing treatment and/or flow control facilities; and new flow control or treatment facilities or BMPs that will address impacts from existing development.

Stormwater Management Program (SWMP) means a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the MEP and to protect water quality, and comprising the components listed in S5 (for cities, towns, and counties) or S6 (for Secondary Permittees) of this Permit and any additional actions necessary to meet the requirements of applicable TMDLs pursuant to S7 – *Compliance with TMDL Requirements,* and S8– *Monitoring and Assessment*.

Stormwater Treatment and Flow Control BMPs/Facilities means detention facilities, permanent treatment BMPs/facilities; and bioretention, vegetated roofs, and permeable pavements that help meet Appendix 1 Minimum Requirements #6 (treatment), #7 (flow control), or both.

Surface Waters includes lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the jurisdiction of the State of Washington.

SWMMWW or **Stormwater Management Manual for Western Washington** means *Stormwater Management Manual for Western Washington (2019).*

SWMP means Stormwater Management Program.

TMDL means Total Maximum Daily Load.

Total Maximum Daily Load (TMDL) means a water cleanup plan. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The calculation must include a margin of safety to ensure that the water body can be used for the purposes the state has designated. The calculation must also account for seasonable variation in water quality. Water quality standards are set by states, territories, and tribes. They identify the uses for each water body, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The Clean Water Act, Section 303, establishes the water quality standards and TMDL programs.

Tributary Conveyance means pipes, ditches, catch basins, and inlets owned or operated by the Permittee and designed or used for collecting and conveying stormwater.

UGA means Urban Growth Area.

Urban Growth Area (UGA) means those areas designated by a county pursuant to RCW 36.70A.110.

Urbanized Area is a federally-designated land area comprising one or more places and the adjacent densely settled surrounding area that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile. Urbanized Areas are designated by the U.S. Census Bureau based on the most recent decennial census.

Vehicle Maintenance or Storage Facility means an uncovered area where any vehicles are regularly washed or maintained, or where at least 10 vehicles are stored.

Water Quality Standards means Surface Water Quality Standards, Chapter 173-201A WAC, Groundwater Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC.

Waters of the State includes those waters as defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and "waters of the State" as defined in

Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington.

Waters of the United States refers to the definition in 40 CFR 122.2.

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LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN

MAYOR: Pete Schave

THE MEMBERS OF
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Amendment to the North Shore Levee Funding Agreement

REPORTS AS FOLLOWS: The City of Aberdeen is currently under agreement with the Washington State Recreation & Conservation Office (RCO) for $2,163,439 for design of the North Shore Levee funded through the Chehalis River Basin Flood Authority (RCO Agreement #18-1214). In 2019 the State Legislature and the Office of the Chehalis Basin provided an additional $9,850,000 to begin implementing the project. An amendment to RCO Agreement #18-1214 is proposed to increase the total funding by $9,850,000 to $12,013,439 and update the scope of work to include final design, permitting, property acquisition, and preliminary phased construction of the levee and related stormwater conveyance and pump station upgrades.

IT IS RECOMMENDED: The City Council shall authorize the Mayor to sign Amendment No. 2 to RCO Agreement #18-1214.

_____
Rick Sangder
Public Works Director

_____
Tim Alstom, Chair

_____
Nathan Kennedy, Vice-Chair

Reported _____, 2020

_____
Joshua Francy, Member

Adopted _____, 2020

_____
Shaney Frame Crosby, Member

WASHINGTON STATE
RECREATION AND CONSERVATION OFFICE
AMENDMENT NO. 2
TO AGREEMENT NO. RCO #18-1214
CITY OF ABERDEEN

PURPOSE
The purpose of this amendment is to increase the project budget for ongoing work performed as part of the Chehalis Basin Strategy during the 2019-2021 biennium.

Agreement #18-1214 by and between the Recreation and Conservation Office (RCO) and the City of Aberdeen (CITY) is amended as follows:

STATEMENT OF WORK
Additional project funding will be used by the CITY for implementation of the North Shore Levee including final design, permitting, property acquisition, and construction of the levee and related stormwater conveyance and pump station upgrades.

Deliverables: Conditional Letter of Map Revision amendment(s); agency and railroad coordination; permits and associated documentation; plans, specifications, estimates, and associated documents for bidding and construction; right-of-way phase including purchase of property and easements; phased preliminary construction including utility relocations and storm drainage infrastructure improvements; operations & maintenance manuals

COMPENSATION
This Amendment #2 adds Nine Million Eight Hundred Fifty Thousand Dollars ($9,850,000) to the Agreement. RCO shall reimburse CITY a total amount not to exceed Twelve Million Thirteen Thousand Four Hundred Thirty-Nine dollars ($12,013,439), including any applicable tax and indirect costs, for the performance of all things necessary for, or incidental to, the work as set forth in this Agreement.

Allowable costs shall include costs incurred from the first date of the Agreement period until the Agreement is terminated or expires as provided herein, but in no event shall allowable costs exceed the maximum amount of the Agreement.

ADMINISTRATION
Effective upon execution of this amendment, contract oversight formerly handled under the auspices of the Chehalis River Basin Flood Authority, will become the responsibility of Office of Chehalis Basin (OCB) staff or it's designee and the assigned RCO Grant Manager. Contract oversight will include but is not limited to: billing, progress and final report review, amendment development/review and budget modifications.

RECORDS

A. Digital Records. If requested by RCO, the CITY must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.

B. Maintenance. The CITY shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. CITY shall retain such records for a period of six years from the date of expiration of this agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. Access to Records and Data. At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the CITY's reports, including computer models and methodology for those models.

D. Public Records. CITY acknowledges that this funding is subject to RCW 42.56 and that this Agreement and any records CITY submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06. By submitting any record to the State, CITY understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The CITY warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The CITY hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

ACKNOWLEDGEMENTS AND SIGNS

A. Publications. The CITY shall include language which acknowledges the contribution of funding from the Chehalis Basin Strategy, through the Office of Chehalis Basin and Chehalis River Basin Flood Authority, to this project in any release or other publication developed or modified for, or referring to, the project during the project period.

B. Signs. During the period of performance, the CITY shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the contribution of funding from the Chehalis Basin Strategy, through the Office of Chehalis Basin and Chehalis River Basin Flood Authority, unless waived by the Office of Chehalis Basin director.

C. Ceremonies. The CITY shall notify the Office of Chehalis Basin and the Chehalis River Basin Flood Authority no later than two weeks before a dedication ceremony for this project. The CITY shall verbally acknowledge the funding contribution from the Chehalis Basin Strategy, through the Office of Chehalis Basin and Chehalis River Basin Flood Authority, at all dedication ceremonies.

SOURCE OF FUNDING

Funds for this amendment are being appropriated from the Washington State Department of Ecology (ECY) and administered through RCO. As such, RCO requires the CITY to adhere to ECY's standards for archeological and cultural resources, and environmental data standards. ECY will act as the lead agency for cultural resources and environmental data.

ARCHAEOLOGICAL AND CULTURAL RESOURCES

CITY shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The CITY agrees to hold harmless DEPARTMENT OF ECOLOGY (ECOLOGY) as the lead agency in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the CITY's negligence, including any subcontractor's negligence.
CITY shall:

A. Contact ECOLOGY to discuss any Cultural Resources requirements for the project:
For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
For projects with any federal involvement, if required, comply with the National Historic Preservation Act. Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.

B. If required by ECOLOGY, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

CITY shall:
Keep the IDP at the project site.
Make the IDP readily available to anyone working at the project site.
Discuss the IDP with staff and contractors working at the project site.
Implement the IDP when cultural resources or human remains are found at the project site.

c) If any archeological or historical resources are found while conducting work under this Agreement:
Immediately stop work and notify ECOLOGY, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.

d) If any human remains are found while conducting work under this Agreement:
Immediately stop work and notify the local law enforcement agency or Medical Examiner/Coroner's Office, and then ECOLOGY.

e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

ENVIRONMENTAL DATA STANDARDS

a) CITY shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. CITY is to contact ECOLOGY as the lead agency if unsure about whether a QAPP is required for their project. If a QAPP is required, the CITY shall:

Use ECOLOGY's QAPP Template/Checklist provided by ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).

Submit the QAPP to ECOLOGY for review and approval before the start of the work.
b) CITY shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY instructs otherwise. The CITY must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: http://www.ecy.wa.gov/eim.
c) CITY shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards. The CITY, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

EFFECTIVE DATE
Regardless of the date of signatures, the effective date of this Amendment is July 1, 2019. In all other respects RCO #18-1214, to which this is an Amendment, and attachments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Amendment.

_____ _____

Scott T. Robinson
Deputy Director
Washington State Recreation and Conservation Office

Date

_____ _____

Pete Schave
Mayor
City of Aberdeen

Date

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LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN

MAYOR: Pete Schave

THE MEMBERS OF
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Approval of Transportation Benefit District 2020 Annual Project Plan

REPORTS AS FOLLOWS: The City's Engineering Department has prepared an Annual Project Plan for work to be performed using funds from the Transportation Benefit District. A public hearing to receive comments on the proposed Annual Project Plan occurred on February 12, 2020. There were no comments made during the public hearing.

IT IS RECOMMENDED: The City Council shall pass a resolution approving the Transportation Benefit District 2020 Annual Project Plan.

_____
Rick Sangder
Public Works Director

_____
Tim Alstom, Chair

_____
Nathan Kennedy, Vice-Chair

Reported _____, 2020

_____
Joshua Francy, Member

Adopted _____, 2020

_____
Shaney Frame Crosby, Member

FINAL

2020 Transportation Benefit District Annual Project Plan

Adopted by Resolution 2020-____

EST. AVAILABLE TBD FUNDS **$ 990,000**

TASK	NAME	ALLOCATION	BUDGET
1	Asphalt Overlays	43.03%	$ 426,000
2	Concrete Panels	8.48%	$ 84,000
3	Sidewalks	38.93%	$ 385,412
4	Alleys	3.03%	$ 30,000
5	Asphalt Patches	1.52%	$ 15,000
6	Crack Sealing	1.52%	$ 15,000
	Contingency	3.49%	$ 34,589
	TBD TOTAL	**100.00%**	**$ 990,000**
	GRANT FUNDING		**$ 860,531**
	TBD+GRANT FUNDING		**$ 1,850,531**

TASK 1 - ASPHALT OVERLAYS & RECONSTRUCTION

Budget $ 426,000

Description:

Funds are provided for repairing subgrade, grinding existing asphalt, and laying new asphalt. Work may include new curb ramps, curb lines, sidewalks, and drainage improvements. Plans and specs are prepared by Engineering Department. Work may be performed by lowest-bidding contractor or by City crews.

Subtask	Location	Work By	Estimate	Grant Funds	City Prep	Grant Match	TOTAL TBD
1.01	Transportation Improvemet Board APP	Contractor	$ 625,000	$ 515,000	$ 32,000	$ 110,000	$ 142,000
	Wishkah from Division to Park						
	Heron from Garfield to Park						
	Garfield from Wishkah to Heron						
1.02	Thomas from Laura to River	Contractor	$ 120,000	$ -	$ 6,000	$ -	$ 126,000
1.03	A Street from 1st to 2nd	Contractor	$ 150,000	$ -	$ 8,000	$ -	$ 158,000
		TOTAL	**$ 895,000**	**$ 515,000**	**$ 46,000**	**$ 110,000**	**$ 426,000**

TASK 2 - CONCRETE PANELS

Budget $ 84,000

Description:

Funds are provided for selectively replacing concrete panels along concrete streets. Panels to be replaced are identified by Engineering Department. Plans and specs are prepared by Engineering Department. Work may be performed by lowest-bidding contractor or by City crews.

Subtask	Location
2.01	9th between I and H
2.02	Stewart @ Holmes
2.03	I from 9th to Park Crosswalk
2.04	5th between N and Williams
2.05	Bel-Aire between Montview and Montview
2.06	Bradford between Alden and Alden
2.07	10th between Alden and Broadway
2.08	Additional locations identified by the City Engineer

TASK 3 - SIDEWALKS

Budget $ 385,412

Description:

Funds are provided for repairing and constructing sidewalks. Work may include drainage improvements and associated road work. Plans and specs are prepared by Engineering Department. Work may be performed by lowest-bidding contractor or by City crews.

Subtask	Location	Work By	Estimate	Grant Funds	City Prep	Grant Match	TOTAL TBD
3.01	GHCNC TA Project	Contractor	$ 700,942.50	$ 345,531.00	$ -	$ 355,412	$ 355,411.50
	Boone Street East Side MP 47.57 to 48.13						
3.02	Evans St. - Miller Driveway North to Park	City	$ 30,000.00	$ -	$ -	$ -	$ 30,000.00
		TOTAL	$ 730,942.50	$ 345,531.00	$ -	$ 355,411.50	$ 385,411.50

FINAL

TASK 4 - ALLEYS

Budget $ 30,000

Description:

Funds are provided for City crews to perform alley paving at locations directed by the City Engineer. The Engineering Department provides design to the crews.

Subtask	Location
4.01	6th Street 2000 block - 6th to Rice
4.02	E Street 1500 block - E to 3rd
4.03	Simpson & Sumner 1300 block - Between Simpson & Sumner
4.04	Sumner 2200 south - Wooding to Duffy
4.05	Prospect Avenue - Prospect to mid block
4.06	Sumner 2100 block (gravel) - Duffy to Haight
4.07	1st Street 1500 block north - Jeffries to Thornton
4.08	1st Street 1400 block (gravel) - Thornton to Williams
4.09	Behind Fire Station
4.10	Additional locations identified by the City Engineer

TASK 5 - ASPHALT PATCHES

Budget $ 15,000

Description:

Funds are provided for City crews to seletively patch asphalt along asphalt streets. Locations are identified by Engineering Department. Plans and specs are prepared by Engineering Department.

Locations:

Any roadway within the City that is not within WSDOT jurisdiction. The Engineering Department provides locations to the crews.

TASK 6 - CRACK SEALING

Budget $ 15,000

Description:

Funds are provided for equipment rental and materials to perform crack sealing on the City's roadways as directed by the City Engineer.

Locations:

Any roadway within the City that is not within WSDOT jurisdiction. The Engineering Department provides locations to the crews.

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LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN

Mr. Mayor: Hon. Pete Schave

The Members of Your Committee On: Public Works

To Whom was Referred: Community Development Director

RE: **Demolition Bids for 217 E. Holman**

REPORT AND RECOMMEND AS FOLLOWS:
Bids for the demolition of a single family house and garage, including asbestos removal, located at 217 E. Holman were requested under the MRSC Small Works Roster and were opened on February 18, 2020. The following bids were received, including sales tax:

1.	**K D & S Environmental, LLC**	**$ 33,768.30**
2.	Advance Environmental	$ 37,580.85
3.	3 Kings Environmental	$ 53,231.28
4.	JAM Construction	$ 65,483.27

It is recommended that K D & S Environmental of Montesano, the lowest, responsive bidder, be awarded the demolition contract. This firm is a licensed contractor pursuant to the laws of the State of Washington and is capable of performing this work.

Therefore, it is recommended that the City Council authorize the Mayor to sign a contract with K D & S Environmental for the demolition and abatement of a nuisance property at 217 E. Holman.

Lisa Scott

Lisa Scott, CD Director

Chair

Reported: February 25, 2020

Adopted: February 25, 2020

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RESOLUTION No. 2020 - _____

RESOLUTION APPROVING THE ANNUAL PROJECT PLAN FOR THE TRANSPORTATION BENEFIT DISTRICT FOR THE YEAR 2020

WHEREAS the Aberdeen City Council passed Resolution 2019-23 which prescribed the process by which the Aberdeen Transportation District would develop and approve Annual Project Plans; and

WHEREAS the Aberdeen City Council has assumed the rights, powers, functions and obligations of the Aberdeen Transportation Benefit District; and

WHEREAS the Aberdeen City Council held a public hearing to receive comments on the proposed 2020 Annual Project Plan on February 12, 2020; and

WHEREAS per Resolution 2019-23, the Annual Project Plan must be approved by March 1 of each year;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN: The Aberdeen City Council shall adopt the Annual Project Plan for the Transportation Benefit District for the year 2020.

PASSED AND APPROVED on this 26th day of February, 2020.

_____

Pete Schave, Mayor

ATTESTED:

_____

Clifford Frederickson, City Clerk

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RESOLUTION No. 2020 - _____

RESOLUTION SETTING THE DATE FOR A PUBLIC HEARING ON THE ANNUAL PROJECT PLAN FOR THE 2020 STORMWATER MANAGEMENT PLAN

WHEREAS the Western Washington Phase II Municipal Stormwater Permit issued by the Department of Ecology calling for the preparation of Stormwater Management Plans; and

WHEREAS the City Council shall schedule a public hearing to receive comments on a proposed Stormwater Management Plan; and

WHEREAS the City Council shall approve a Stormwater Management Plan no later than March 25 of each year;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN: A public hearing to receive comments on the proposed 2020 Stormwater Management Plan (SWMP) shall be held on Wednesday, March 11, 2020 in the Aberdeen City Council Chambers at the hour of 7:15 PM.

PASSED AND APPROVED on this 26th day of February, 2020.

_____

Pete Schave, Mayor

ATTESTED:

_____

Clifford Frederickson, City Clerk

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HUMAN RESOURCES DEPARTMENT
CITY OF ABERDEEN

Mayor: Hon. Pete Schave

The Members of Your Committee On: Personnel and Public Works Director

To Whom Was Referred: Request for appointment of Assistant City Electrician to Step 5

Reports and Recommends as Follows: On February 20, 2020, members of the Personnel Committee met and discussed the request for appointment of Assistant City Electrician to salary step 5 for Joel Greene.

Joel Greene has 25 years of experience as an electrician. The salary scale has five steps in which employees progress on step per year. With Joel's extensive experience it is recommended that he be approved to start at Step 5.

Per Personnel Policy 7.20 Salary Steps any exceptions beyond the third step of the range for any new employee, including later police officers, must be reviewed by the Personnel Committee and approved by the City Council.

It is recommended that the City Council adopt the recommendation for Joel Greene to start at Assistant City Electrician with a salary of Range 20, Step 5 upon his hire.

Sarah Kangas-Hanes
Human ResourcesDirector

PERSONNEL COMMITTEE

Mayor Schave, Chair

Reported: 02/20/2020

Council President

Adopted: _____, 2020

Council Member

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HUMAN RESOURCES DEPARTMENT
CITY OF ABERDEEN

Mayor: Hon. Pete Schave

The Members of Your Committee On: Personnel and Public Works Director

To Whom Was Referred: Request to Hire an Engineer III or Project Manager

Reports and Recommends as Follows: On February 20, 2020, members of the Personnel Committee met and discussed the request to hire an Engineer III or create a job description and hire a Project Manager.

The Public Works Department has a workload that has reached unprecedented and unattainable levels. In the next ten (10) years there is in excess of 120 million dollars worth of infrastructure work planned in Public Works. The design and construction management aspects of these projects are typically performed by consultants with City of Aberdeen oversight and management.

Construction management (CM) costs are typically estimated at 12 -15% of the construction total based on project complexity. These percentages would correspond to 14.4 - 18 million dollars. Hiring appropriately experienced staff would allow the City to reduce those costs by approximately 20% by performing project management and inspection work in house. The corresponding saving once the employee's wage and benefit is figured in would be 1.4 – 2.1 million dollars over ten years.

It is requested that the City Council authorize the Human Resources Director and Public Works Director to publicize and hire an Engineer III, or create and hire a Project Manager for the 2020 budget year.

Sarah Kangas-Hanes
Human Resources Director

PERSONNEL COMMITTEE

Mayor Schave, Chair

Reported: 02/20/2020

Council President

Adopted: _____, 2020

Council Member

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HUMAN RESOURCES DEPARTMENT
CITY OF ABERDEEN

Mayor: Hon. Pete Schave

The Members of Your Committee On: Personnel and the Fire Chief

To Whom Was Referred: Position description and classification for Fire Services Specialist

Reports and Recommends as Follows: On February 20, 2020, members of the Personnel Committee met and discussed the proposed job description and job classification for Fire Services Specialist.

During the 2020 budget processes City Council approved a fulltime position to serve as a Fire Services Specialist. The position was approved due to the increased need for fire prevention inspections, coordination of the Community Risk Reduction program, EMS Quality Improvement/Quality Assurance, and public fire safety programs. The job description and classification were created to fill the duties outlined by the Fire Chief and have been presented to IAFF Local 2639.

It is recommended that the City Council adopt the attached job description and create the job classification for Fire Services Specialist effective immediately.

Sarah Kangas-Hanes
Human Resources Director

Reported: February 20, 2020

PERSONNEL COMMITTEE

Mayor, Chairman

Council President

Council Member

Adopted: February _____, 2020

CITY OF ABERDEEN
POSITION CLASSIFICATION

Fire Service Specialist

Salary Range: Firefighter EMT
Union Status: IAFF Local 2639
FLSA Status: Non-Exempt
Date Adopted:

DEFINITION: The Fire Service Specialist is a uniformed full time 40 hour per week fire department postion with the primary function of providing fire prevention inspections in commercial occupancies and schools, delivering fire safety and fire prevention education programs to the public, managing the fire department's Community Risk Reduction program, and providing EMS Quality Improvement/Quality Assurance.

REPORTS TO: Assistant Fire Chief

DISTINGUISHING CHARACTERISTICS:

The Fire Service Support Specialist will interact with the public on a daily basis providing fire prevention and public education outreach. Punctual, regular and reliable attendance is essential for successful job performance. The position will require the incumbent to manage multiple programs both internally and externaly and ensure compliance with reporting requirements.

ESSENTIAL JOB FUNCTIONS:

Under the supervision of the Assistant Fire Chief, performs fire prevention inspections of public and private buildings for compliance with fire codes.

The Fire Service Specialist may respond to emergency incidents to perform fire ground or EMS incident activities to include Safety Officer, Public Information Officer, Liaiason Officer, Logistics Section Chief, Planning Section Chief, Rehabilitation Unit Leader and other non-combat roles.

Develop and coordinate the fire department's Community Risk Reduction program. Community Risk Reduction (CRR) is the identification and prioritization of risks, threats and hazards followed by the implementation and evaluation of strategies to lessen their impact.

Drives fire apparatus and ambulances when required to include: emergency response to fire and EMS incidents, Inter-facility Medical tranfers, delivery of vehicles for scheduled maintenance, and to conduct fire inspections and delivier public education and public outreach.

Serves as a member of the EMS QA/QI Committee to ensure proper documentation of EMS reports

Maintains the fire department's Hazard Communication Program

Submits claims to EF Recovery for reimbursement of supplies used to mitigate hazardous materials incidents

Maintains fleet maintenance records, schedules routine monthly and annual maintenance of fire and EMS vehicles to include pump and ladder testing

Maintains records of apparatus daily, weekly, monthly testing and inventories of department vehicles

Provides AHA BLS Healthcare Provider and CPR training to members of the Aberdeen Fire Department.

Coordinates public outreach for citizen CPR and first aid training.

Assist fire department Training Officer in documentation and record keeping for all fire department training.

Orders and maintains an inventory of fire department cleaning supplies and consumables

Orders and maintains an inventory of all personal protective equipment (firefighter turnout gear)

Orders and maintains an inventory of all fire department communciations equipment

Pursues grant opportunites on behalf of the Aberdeen Fire Deparment to include grants for services and equipment.

WORK ENVIRONMENT/EQUIPMENT USED:

Equipment used includes but is not limited to driving motor vehicles such as ambulances and fire apparatus, portable radios, and commonly used office equipment such as telephones, computers, calculators, copy machines.

Physical activity required includes all forms of body motions including sitting and standing for extended periods of time, reaching, bending, squatting, stooping, twisting,

DESIRABLE QUALIFICATIONS:

Ability to learn and understand principles and techniques of fire prevention and investigation, respond quickly and exercise sound judgment in emergency situations, follow oral and written instructions, communicate effectively both orally and in writing, maintain responsible and cooperative attitude toward co-workers and the general public.

EDUCATION AND EXPERIENCE:

High school degree or GED equivalent;
AA Degree in Fire Science or Technology is desirable
Three years experience as a full time career firefighter is desirable

LICENSES, CERTIFICATES, AND OTHER REQUIREMENTS:

- U.S. Citizen
- Valid Washington State Drivers License
- Be at least 18 years of age
- Bilingual is desirable
- Possess Washington State EMT B certification

- Posses IFSAC Firefighter I certification
- Physical ability to perform the essential job functions
- Ability to obtain AHA BLS and AHA Instructor certification within one year of obtaining the position
- Ability of obtain IFSAC Fire Instructor 1 certification within one year of obtaining the postion.
- Ability to obtain GH EMS OTEP Instructor certification within one year of obtaining the postion.
- Ability to obtain Emergency Vehicle Incident Prevention (EVIP) certification within 6 months of obtaining the position

HUMAN RESOURCES DEPARTMENT
CITY OF ABERDEEN

Mayor: Hon. Pete Schave

The Members of Your Committee On: Personnel and the Police Chief

To Whom Was Referred: Job Description Revisions for Police Lieutenant and Police Sergeant

Reports and Recommends as Follows: On February 20, 2020, members of the Personnel Committee met and discussed the proposed revisions of the job descriptions for the Police Lieutenant and Police Sergeant.

The position of Police Lieutenant was last revised in 2014. The Police Sergeant was last revised in 2016. The proposed changes are to update the job descriptions due to the Police Commander title change, and adjust the experience requirements.

It is recommended that the City Council adopt the revisions to the Police Lieutenant and Police Sergeant positions effective immediately.

Sarah Kangas-Hanes
Human Resources Director

Reported: February 20, 2020

PERSONNEL COMMITTEE

Pete Schave, Chairman

Council President

Council Member

Adopted: January_____, 2020

CITY OF ABERDEEN
POSITION CLASSIFICATION

POLICE LIEUTENANT

Salary Range: Per Union Contract
Union Status: Police Administrators Union
FLSA Status: Exempt
Date Adopted: 2007, 09/13, 06/14, 01/20

DEFINITION: The Police Lieutenant primarily plans, organizes, and directs operations of the police department. When called upon, p~~P~~erforms the function of the Police Commander ~~Captain~~ in ~~his/her~~ their absence. ~~and~~ ~~c~~Coordinates or assists the ~~Captain~~ Police Commander in division planning, budgeting, information systems, community partnerships, administration and operations.

REPORTS TO: Police ~~Captain~~ Commander

SUPERVISES: ~~Any of the following positions: Sergeant, Corporal, Police Officer, Corrections Officer, Police Service Specialist, Investigations Specialist, Evidence Specialist, Animal Control Officer, Animal Control Shelter Custodian and Parking Enforcement Officer.~~ Police personnel as designated by the organizational chart of the police department or as directed by the Chief of Police.

DISTINGUISHING CHARACTERISTICS:

The position of Lieutenant manages a function in a ~~section~~ division and may have responsibility for both sworn and civilian employees. The duties of the Lieutenant are largely administrative and supervisory in nature and include, but are not limited to, planning, training, development and management of first-line supervisors, community interaction, and deployment of ~~his/her~~ their assigned personnel. The position acts independently within broad policy guidelines to achieve effective results consistent with goals and objectives established by the ~~Captain~~ Chief of Police.~~.~~

ESSENTIAL JOB FUNCTIONS:

Works closely with the ~~captain~~ Police Commander to plan, organize, and implement effective police operations.

Plans schedules and oversees the activities of sworn and civilian personnel in operations of assigned shifts and or personnel.

Assists in the development and implementation of department policies and pertinent to areas of assignment.

Coordinates emergency responses with other law enforcement or emergency agencies such as fire departments, search and rescue teams and CR units in specific situations.

Assists the ~~captain~~ Police Commander in developing goals and standards for police projects and coordinating their implementation.

ESSENTIAL JOB FUNCTIONS: (Continued)

Participates in developing operation plans for various special operations, natural disasters, or civil emergencies.

Provides information to the news media, as ~~needed,~~ needed, on current police investigations and programs to inform and solicit public support and understanding.

May review reports previously approved by other supervisors.

Works closely with first-line supervisors to review work methods and to evaluate case handling and the corresponding results. Develops and implements any corrective actions to overcome deficiencies.

Investigates cases of alleged or apparent misconduct of first-line supervisors. Responds to public complaints of operations or conduct.

Reviews investigations by shift supervisors or citizen complaints of assigned personnel to assure rules, regulations, policies and procedures are adhered to.

Responds to the scene of major or highly sensitive incidents and assumes command or assists the person in command; coordinates emergencies in the field, serves on call as a command officer for the department.

Performs the duties of sergeant~~, corporal, lead officer,~~ or police officer as needed. (See essential job functions of those positions).

Performs the duties of P~~p~~olice ~~captain~~ Commander in ~~his/her~~ their absence on an as needed basis. Develops and maintains liaison with other law enforcement agencies.

Attends a variety of meetings as needed.

OTHER JOB FUNCTIONS:
Participates in professional association functions.
Performs other related duties as required.

WORK ENVIRONMENT/EQUIPMENT USED:
Work is performed outdoors and in an indoor office setting with frequent time spent in and operating a motor vehicle.

Equipment used primarily includes, but is not limited to, common office equipment and all police equipment. (See work environment/equipment used in police officer/sergeant classification).

DESIRABLE QUALIFICATIONS:

Knowledge of: City, state, and federal laws and regulations pertaining to police service operations, modern law enforcement principles, procedures, basic computer operations, information technologies and equipment, management and supervisory principles and methods, and an effective ability to communicate verbally and in writing.

Ability to: Recognize and analyze a variety of problems and to make effective recommendations for solutions, perform effectively in emergency and stressful situations, monitor and evaluate the work of staff, organize and oversee work programs, including monitoring budgets, work schedules, legal requirements, and communicate effectively with individuals and groups. Establish and maintain effective working relations with agency members, city staff, and the community.

EDUCATION AND EXPERIENCE:

A Bachelors or Associates college degree or college level work in a degree field in police science, pre-law, business, public administration or other areas closely related to police administration is desirable.

Requirements to test for this position include five (5) years employment with the Aberdeen Police Department; and at least two years of experience as a sergeant or at least two years of experience as a sergeant or higher rank from another civilian police agency. ~~having no discipline above a verbal warning during the previous two years prior to the test and at least one year experience as an Aberdeen Police Sergeant or Corporal, or an Aberdeen Police Officer with at least one year of experience as a Corporal or higher rank in another civilian police agency and having no discipline above a verbal warning during the two years prior to the test.~~ The Aberdeen Civil Service Commission may authorize an examination of external candidates under circumstances specified in the civil service rules.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

- U.S. Citizen
- Valid Washington State Driver's License
- Washington State Peace Officers Certification
- Physical ability to perform the essential job functions and tasks with or without reasonable accommodation.
- State First-Level Supervisory Certification, or ability to obtain within one year of promotion
- State Mid-Management Certification, or ability to obtain within one year of promotion

CITY OF ABERDEEN
POSITION CLASSIFICATION

POLICE SERGEANT

Salary Range: **21P**
Union Status: **Police Guild**
FLSA Status: **Non-Exempt**
Date Adopted: **01/93, 01/2016, 01/2020**

DEFINITION: Supervises police personnel on an assigned shift or unit.

REPORTS TO: Police Lieutenant and/or Police Commander ~~(depending on assignment).~~

SUPERVISES: Police personnel as designated by the organizational chart of the police department or as directed by the Chief of Police ~~on the department's organization chart or directed by the Chief of Police.~~

DISTINGUISHING CHARACTERISTICS:

Positions in this classification may supervise and perform patrol, investigation, jail, crime prevention, records, or special program activities, depending on areas of assignment. The work requires increased skill to perform general police duties as well as assignments in a specialized area of police work.

ESSENTIAL JOB FUNCTIONS:

Assigns officers and equipment during a shift; arranges for substitutes for absentees; authorizes temporary absences; assigns duty areas and project assignments according to general guidelines with necessary changes to accommodate current problems.

Directs the activities of officers or other staff members in a unit or shift. Organizes, oversees and participates in police patrol duties, operation of the jail and records section, investigation of crimes and other special assignments. Monitors and responds to requests for assistance to assure that services are provided to the community.

Responds to crime scenes, accidents and other serious or sensitive incidents and assumes command or assists the officer in charge.

Assists in classroom and field training of officers and new recruits. Advises personnel on new laws and insures compliance of rules, regulations and policy to meet goals and priorities. Prepares employee evaluation reports.

Supervises or conducts investigations and supervises difficult or sensitive cases by interviewing complainants, witnesses and suspects; apprehends and transports suspects. Obtains evidence and other documentation, prepares investigation reports, testifies in court, participates in the investigation of complaints against department personnel, initiates discipline and remedial actions and testifies at required hearings.

ESSENTIAL JOB FUNCTIONS: (Continued)

Reviews reports, logs and other records prepared by assigned ~~police corporals and~~ police officers to assure accuracy and adequacy and assures that cases are properly prepared and presented in court and takes corrective action as appropriate and authorized.

Periodically o~~O~~versees the operation of the jail and care of inmates. This may include~~s~~ intake and release of prisoners; hygienic and medical care and feeding of prisoners and cleanliness of facility.

Makes oral presentations and participates in discussions with citizen groups, students and community organizations to maintain and improve police/community relations.

Performs all essential functions of ~~Police Corporal~~, Police Officer (see ~~Police Corporal and~~ Police Officer classification~~s~~).

OTHER JOB FUNCTIONS:

~~Assists in the supervision of the records section by assuring adequate staff is available.~~

Monitors radio calls and answers telephones and in-person inquiries as necessary.

Same as that of Police ~~Corporal or Police~~ Officer; see Police ~~Corporal and Police~~ Officer classification~~s~~.

Performs other related duties as required.

PRIMARY AND ESSENTIAL TASKS:

Same as that of Police ~~Corporal or Police~~ Officer; see ~~Police Corporal and~~ Police Officer classification~~s~~.

WORK ENVIRONMENT/EQUIPMENT USED:

Same as that of Police ~~Corporal or Police~~ Officer; see Police ~~Corporal and Police~~ Officer classification~~s~~.

DESIRABLE QUALIFICATIONS:

Knowledge of: law enforcement principles, procedures, techniques and equipment; laws of arrest; search and seizure; statutory definition of all types of crimes for which investigations are commonly conducted; police investigation methods, techniques and equipment.

Ability to: lead, coordinate and supervise the work of others; supervise and train new officers in law enforcement and investigation techniques; plan effectively during emergency to obtain all help necessary with minimal interruption of police department protection to other areas of the City; plan and conduct criminal investigations; demonstrate skill in interviewing witnesses, suspects and others; respond quickly and exercise sound judgment in emergency situations; employ proper methods of physical restraint of other persons; handle firearms safely and fire them accurately; maintain cooperative and responsible attitude toward co-workers and general public; communicate effectively, both orally and in writing; physical ability to perform the work.

EDUCATION AND EXPERIENCE:

- College level course work in police science and related subjects is desirable.
- Requirement to test for this position requires ~~having no discipline above a verbal warning during the 12 months prior to the test and~~ at least ~~12 months~~ three (3) years experience as an Aberdeen Police ~~Corporal~~ Officer.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

- U.S. Citizenship.
- Valid Washington State Driver's License.
- Washington State Peace Officer's Certification
- Physical ability to perform the essential job functions and tasks with or without reasonable accommodation.
- State First-Level Supervisory Certification, or ability to obtain within one year of promotion.