



CITY COUNCIL MEETING

May 3, 2016 – Agenda

Mt. Si Senior Center, 411 Main Ave. S., North Bend, Washington

7:00 P.M. – CALL TO ORDER, ROLL CALL, FLAG SALUTE

CONSENT AGENDA:

		Pg.#
1) Minutes	Special Workstudy of April 5, 2016 & Council Meeting of April 19, 2016	1
2) Payroll	April 20, 2016 – 27458 through 27464, in the amount of \$151,164.16	
3) Checks	May 3, 2016 – to be announced	
4) AB16-048	Ordinance – Amending NBMC RE Code Enforcement	Mr. Spencer 7
5) AB16-049	Ordinance – Amending Taxes, Rates & Fees Schedule RE Support Costs	Ms. Masko 47
6) AB16-050	Ordinance – Amending NBMC 5.04 RE B&O Tax	Ms. Masko 53
7) AB16-051	Ordinance – Adopting NBMC 3.26 Commercial Parking Tax	Ms. Lindell 75

CITIZEN'S COMMENTS: (Please restrict comments to 3 minutes)

ANNOUNCEMENTS, PRESENTATIONS, APPOINTMENTS:

8) Proclamation	Building Safety Month, May 2016	Mayor Hearing 85
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INTRODUCTIONS:

9) AB16-052	Ordinance – Amending NBMC RE Franchise Utility & Street Lighting	Mr. McCarty 87
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MAYOR, COUNCIL & ADMINISTRATOR CONCERNS AND INITIATIVES: (Business and general information presented that may be deliberated upon by the Council. Formal action may be deferred until a subsequent meeting; immediate action may be taken upon a vote of a majority of all members of the Council.)

ADJOURNMENT:

DRAFT

CITY OF NORTH BEND
CITY COUNCIL
SPECIAL WORKSTUDY NOTES
April 5, 2016 – 6:00 p.m.
Mt Si Senior Center, 411 Main Ave. S., North Bend, WA

Mayor Hearing called the meeting to order at 6:01 p.m.

Councilmembers Brenden Elwood, Alan Gothelf, Trevor Kostanich, Jeanne Pettersen and Jonathan Rosen. Councilmembers Ross Loudenback and Martin Volken were excused.

Staff Present: Mayor Ken Hearing, City Administrator Londi Lindell, Public Works Director Mark Rigos, Community & Economic Development Director Gina Estep, Building Official Dave Spencer, and City Clerk Susie Oppedal.

Discussion on Cottage Housing Zone Development

Community & Economic Development Director Estep provided a brief history of the Cottage Residential Zone and noted the area was initially created in order to provide smaller more affordable homes in the community.

Ms. Estep explained the zone had undergone a few changes since its initial creation and there was current interest to formalize a common vision regarding Cottage Housing and the City’s Cottage Residential Zone. She reviewed packet materials and supplemental handouts which included an article about the “Missing Middle”, City of Kirkland Zoning Code Chapter 113 Cottage, Carriage and Two/Three Unit Homes, Comparison Chart comparing the City’s Cottage Residential Code with other municipalities, Cottage Performance Standards, and visual examples of cottage developments.

Council discussed the benefits of clustering around a green space, affordability options, zone vs. infill, different architectural designs, discontinuation of reduced impact fee for cottage housing, attached/detached garages, separation requirements, smaller cottage units, orientation to views, and private yard space.

Ms. Estep concluded by requesting Council email her if they have any questions or comments prior to the April 12th Special Council Workstudy on the topic.

Adjournment

The workstudy closed at 6:53 p.m.

ATTEST:

Kenneth G. Hearing, Mayor

Susie Oppedal, City Clerk

DRAFT

<p style="text-align: center;">NORTH BEND CITY COUNCIL MINUTES April 19, 2016 Senior Center, 411 Main Ave. S., North Bend, Washington</p>

CALL TO ORDER, ROLL CALL:

Mayor Hearing called the regular meeting to order at 7:00 p.m.

Councilmembers Present: Elwood, Gothelf, Loudenback, Pettersen, Rosen and Volken. Councilmember Kostanich was excused.

CONSENT AGENDA:

- Minutes** – Council Meeting of April 5, 2016
- Payroll** – **April 5, 2016 – 27451** through **27457**, in the amount of **\$194,056.37**
- Checks** – **April 19, 2016 – 62619** through **62682**, in the amount of **\$500,025.19**
- AB16-042** – Motion Authorizing Purchase of City Vehicle from Corwin Ford
- AB16-043** – Motion Authorizing Contract with RH2 for Engineering Services
- AB16-044** – Motion Authorizing Amendment to Blueline Work Order for NE 12th Street Project

Councilmember Rosen **MOVED**, seconded by Councilmember Elwood to approve the consent agenda as amended. The motion **PASSED** 6-0.

CITIZEN’S COMMENTS:

Dave Olson, 440 Main Avenue South, provided an update on Kiwanis activities.

ANNOUNCEMENTS, PRESENTATIONS, APPOINTMENTS:

Presentation – Legislative Update **Audio: 3:38**

State Senator Mark Mullet and Representative Chad Magendanz provided a report on the 2016 Legislative Session.

COMMISSION AND COMMITTEE REPORTS:

Planning Commission
A report of the April 14th meeting was provided.

Parks Commission
No report – The next meeting is scheduled for April 27, 2016.

DRAFT

Economic Development Commission

No report.

Community & Economic Development Committee – Councilmember Pettersen, Chair

A report of the April 19th meeting was provided.

Finance & Administration Committee – Councilmember Rosen, Chair

A report of the April 5th meeting was provided.

Public Health & Safety Committee – Councilmember Gothelf, Chair

A report of the April 12th meeting was provided.

Transportation & Public Works Committee – Councilmember Loudenback, Chair

A report of the April 13th meeting was provided.

Council Workstudy – Mayor Pro Tem Loudenback

A report of the April 12th Special Workstudy was provided.

Eastside Fire & Rescue Board Meeting – Councilmember Gothelf

A report of the April 14th meeting was provided.

INTRODUCTIONS:

AB16-045 – Ordinance 1583 Amending NBMC Chapter 18 RE Commercial Truck Centers/Parking **Audio: 26:30**

Community & Economic Development Director Estep provided the staff report.

The following individuals spoke regarding the Ordinance Amending NBMC Chapter 18 RE Commercial Truck Centers/Parking:

Jean Buckner, 46226 SE 139th Place

Samuel Rodabough, 11820 Northup Way, Suite E200, Legal Counsel for Rogers Group Properties I, LLC

Jeff Martine, 13534 476th Avenue SE

Dutch Siedentopf, 46226 SE 139th Place

Robert Manelski, 13701 457th Avenue SE

Sarah Burd, 46300 SE 137th Street

Dave Hutton, 13906 463rd Avenue SE

DRAFT

Paula Lodahl, 435 SE Maple Drive

Michael Kelley, 529 NE 8th Street

Gary Fancher, 47532 SE 137th Street, Planning Commission Chair

Councilmember Pettersen **MOVED**, seconded by Councilmember Rosen to approve AB16-045, an ordinance amending North Bend Municipal Code Sections 18.06.030, 18.10.025, and 18.10.050, related to Commercial Truck Centers and Parking, as a first and final reading. The motion **PASSED** 6-0.

AB16-046 – Ordinance 1584 Amending NBMC 18.10 Special Districts RE Tanner Junction MPOD **Audio: 1:11:58**

Community & Economic Development Director Estep provided the staff report.

The following individuals spoke regarding the Ordinance Amending NBMC 18.10 Special Districts RE Tanner Junction MPOD:

Gary Fancher, 47532 SE 137th Street, Planning Commission Chair

Chris Garcia, 770 SE 10th Street

Councilmember Pettersen **MOVED**, seconded by Councilmember Rosen to approve AB16-046, an ordinance amending North Bend Municipal Code Chapter 18.10.025, Special Districts, as it pertains to the Tanner Junction Master Plan Overlay District, as a first and final reading.

Bob Hibbs, property owner and representative of Rexford R Hibbs Irrevocable Trust, responded to questions regarding his proposed project.

Councilmember Pettersen **MOVED**, seconded by Councilmember Rosen to amend Exhibit A of the ordinance to include the addition of language pertaining to affordable housing and performance standards (as identified in handout provided entitled Exhibit A Page 4/6). The motion **PASSED** 5-1 (Elwood).

The main motion then **PASSED AS AMENDED** 5-1 (Elwood).

AB16-047 – Motion Authorizing Amendment to Si View Torguson Park ILA RE Design of BMX & Park Entrance **Audio: 1:49:24**

Associate Planner Hyde provided the staff report.

The following individuals spoke regarding the Amendment to Si View Torguson Park ILA:

DRAFT

Paula Lodahl, 435 SE Maple Drive

Travis Stombaugh, Si View Metropolitan Park District Executive Director

Councilmember Rosen **MOVED**, seconded by Councilmember Gothelf to approve AB16-047, authorizing first amendment to Torguson Park ILA with Si View MPD for design of BMX and park entrance improvements. The motion **PASSED** 6-0.

MAYOR, COUNCIL, AND ADMINISTRATOR CONCERNS AND INITIATIVES:

Councilmember Loudenback encouraged everyone to attend the April 23rd Jazz Walk event being held in Downtown North Bend.

Councilmember Gothelf wished Mayor Fred Butler a speedy recovery following his recent health problems.

Mayor Hearing spoke regarding the following items:

- EJ Roberts Ribbon Cutting – April 20th 4:30 – 6 p.m.
- April 23rd Spring Recycling Event at Mt Si High School 9th Grade Campus
- Teen Clothing Bank – May 4th 4 – 6 p.m.

ADJOURNMENT:

Councilmember Rosen **MOVED** to adjourn, seconded by Councilmember Elwood. The motion **PASSED** 6-0.

The meeting adjourned at 9:01 p.m.

ATTEST:

Kenneth G. Hearing, Mayor

Susie Oppedal, City Clerk



City Council Agenda Bill

SUBJECT:		Agenda Date: May 3, 2016	AB16-048	
An Ordinance Adopting Various Amendments to North Bend Municipal Code Pertaining to Code Enforcement Cost Impact: N/A Fund Source: N/A Timeline: Immediate		Department/Committee/Individual		
		Mayor Ken Hearing		
		City Administrator – Londi Lindell		
		City Attorney – Amy Mill		X
		City Clerk – Susie Oppedal		
		Community & Economic Development – Gina Estep		
		Finance – Dawn Masko		
		Public Works – Mark Rigos		
		Building Official – David Spencer		X
		Attachments: Ordinance (Clean Version), Ordinance (Redline Version)		
<p>SUMMARY STATEMENT:</p> <p>The existing code enforcement provisions in the North Bend Municipal Code (NBMC) create confusion as to the enforcement process. For example, while NBMC 20.10.160 gives the City authority to issue civil infractions, the Code also provides for a preset administrative hearing for a Notice of Violation (NOV), and also refers to actions to be taken by the court. Infractions and NOVs are two different enforcement mechanisms, and the current Code intermingles the procedures without clear direction.</p> <p>The Code changes proposed in the attached Ordinance clarify an administrative process that begins with seeking voluntary correction through informal contact, then issuing an NOV requiring correction by a certain date. If those efforts fail to resolve the problem, then a civil infraction is issued and filed with the municipal court. The City also retains the option to assess monetary penalties and/or abate the condition and collect costs of abatement from the person responsible for the violation.</p> <p>In addition to clarifying this process and improving the reliability of the City’s code enforcement procedure, the attached Ordinance also moves the code enforcement provisions from Title 20 (Administration of Land Use Regulations) to Title 1 (General Provisions), and provides numerous housekeeping revisions to update cross-references throughout the Code.</p>				
<p>COMMITTEE REVIEW AND RECOMMENDATION: The Public Health & Safety Committee reviewed this item at its April 12, 2016 meeting and recommended approval and placement on the consent agenda.</p>				
<p>RECOMMENDED ACTION: MOTION to approve AB16-048, an ordinance adopting various amendments to North Bend Municipal Code pertaining to Code Enforcement, as a first and final reading.</p>				
RECORD OF COUNCIL ACTION				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		
May 3, 2016				

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO CODE ENFORCEMENT, AND SPECIFICALLY REPEALING NORTH BEND MUNICIPAL CODE CHAPTER 1.20 ENTITLED “GENERAL PENALTY” AND ADOPTING A NEW CHAPTER 1.20 TO BE ENTITLED “CODE ENFORCEMENT”; REPEALING NORTH BEND MUNICIPAL CODE CHAPTER 20.10 AND SECTION 18.32.040; AMENDING NORTH BEND MUNICIPAL CODE SECTIONS 8.08.050, 8.20.120, 8.26.150, 8.38.080, 12.08.090, 12.12.060, 13.36.340, 13.36.350, 15.08.020, 15.36.160, 16.08.170, 17.08.170, 18.32.010, 18.32.030, 19.10.260, 19.24.040, AND 19.24.060; ADOPTING A NEW NORTH BEND MUNICIPAL CODE SECTION 20.01.007; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of North Bend seeks to promote the public health, safety, and general welfare of the municipality and the safe, orderly, and healthful development of the City; and

WHEREAS, in the interest of the public health, safety, and welfare, the City desires to clarify and revise the code enforcement provisions of the North Bend Municipal Code (“NBMC”) to govern the enforcement of civil code violations; and

WHEREAS, numerous additional housekeeping amendments are necessary in order to implement the new code enforcement provisions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Repealer: North Bend Municipal Code Chapter 1.20 (General Penalty) is hereby repealed in its entirety.

Section 2. Repealer: North Bend Municipal Code Chapter 20.10 (Land Use Violations) is hereby repealed in its entirety.

Section 3. Repealer: North Bend Municipal Code Section 18.32.040 (Appeal of hearing examiner decisions), is hereby repealed in its entirety.

Section 4. New NBMC Chapter 1.20 (Code Enforcement), Adopted: A new North Bend Municipal Code Chapter 1.20 (Code Enforcement) is hereby adopted to read as follows:

**Chapter 1.20
CODE ENFORCEMENT**

Sections:

- 1.20.010 Purpose.
- 1.20.020 Definitions.
- 1.20.030 Conflicting code provisions.
- 1.20.040 Applicability.
- 1.20.050 First contact.
- 1.20.060 Notice of violation.
- 1.20.070 Voluntary correction agreement.
- 1.20.080 Notice of civil infraction.
- 1.20.090 Reserved.
- 1.20.100 Monetary penalty – Civil violations.
- 1.20.110 Abatement by the city.
- 1.20.120 Interference unlawful – Misdemeanor.
- 1.20.130 Stop work orders – Emergency orders.
- 1.20.140 Violation of stop work orders or emergency orders – Misdemeanor.
- 1.20.150 Additional enforcement procedures.
- 1.20.160 Criminal violations – General penalty – Separate offense.

1.20.010 Purpose.

The purpose of this chapter is to provide city staff and the general public with notice of the procedure to be followed to enforce city regulations.

1.20.020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or they are more specifically defined in a section or subsection. Terms not defined shall be given their usual meaning.

A. **“Abate”** means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this code or a city regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized official determines is necessary in the interest of the general health,

safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

B. **“Act”** means doing or performing something.

C. **“City”** means the City of North Bend, Washington.

D. **“Civil penalty”** or **“monetary penalty,”** as used in any code, ordinance or regulation of the city, shall be deemed to have the same meanings as used in this chapter.

E. **“Code”** or **“NBMC”** means the North Bend Municipal Code.

F. **“Code enforcement officer”** or **“enforcement officer”** means the city’s code enforcement officer(s); the building official; building inspectors; construction inspectors; the fire marshal or his or her designee; fire inspectors; the chief of the North Bend police department or his or her designee; the director of the community development department or his or her designee; the director of the public works department or his or her designee; or any other person or persons assigned or directed by the mayor or his or her designee to enforce the regulations subject to the enforcement and penalty provisions of this chapter.

G. **“Correction date”** means a date or time by which corrective actions must be completed, as set forth in a voluntary correction agreement or notice of violation entered into or issued pursuant to this chapter.

H. **“Costs”** means, but is not limited to, personnel costs, both direct and indirect, and contract expenses incurred in abating a nuisance; a rental fee for city equipment used in abatement; hauling, storage, disposal, or destruction expenses related to abating a nuisance; legal expenses and attorneys’ fees associated with enforcement under this chapter, including civil judicial enforcement of abatement orders or in seeking abatement orders; costs incurred in documenting the violation; actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; costs of any required printing and mailing; and any other costs incurred by the city, excluding fees and

expenses associated with appeals authorized by this code or by state law.

I. **“Day”** or **“days”** means one or more calendar days, unless expressly stated otherwise in a given section or subsection. In addition, any portion of a 24-hour day shall constitute a full calendar day.

J. **“Notice of violation”** means a written statement, issued by a code enforcement officer, which contains the information required under NBMC 1.20.060(A) and which notifies a person that he or she is responsible for one or more violations of the North Bend Municipal Code or other regulation.

K. **“Omission”** means a failure to act.

L. **“Owner”** means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of a building or land.

M. **“Person”** means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human beings and organizational entities, any of the following pronouns may be used to describe a person: he, she, or it.

N. **“Person responsible for the violation”** or **“responsible person”** includes the plural forms thereof and means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a tenant or other person having the owner’s permission to occupy the premises; or any person who created, caused, participated in, or has allowed a violation to occur.

O. **“Premises”** means the building, structure, premises, and/or land upon or within which a violation has occurred or is occurring.

P. **“Regulation”** means and includes any of the following, as now enacted or hereafter amended:

1. All North Bend Municipal Code provisions;
2. All standards, regulations, and procedures adopted by the city pursuant to a city ordinance; and
3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement entered into with the city, pursuant to code provisions.

Q. **“Repeat violation”** means, as evidenced by the prior issuance of a correction notice or a notice of violation, a subsequent violation that has occurred on the same property or that has been committed by a person responsible for the prior violation elsewhere within the City of North Bend. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation. The violation of a written order of the hearing examiner that has been served as provided in this chapter shall constitute a repeat violation.

R. **“Violation”** or **“civil violation”** or **“civil infraction”** means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the city, and each day or any portion of a day during which a violation occurs or continues is a separate offense.

1.20.030 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the North Bend Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation. In the event of a conflict between this chapter and any other provision of this code or city ordinance providing for a civil penalty, the more specific provision shall control.

1.20.040 Applicability.

The procedures set forth in NBMC 1.20.050 through 1.20.140 apply whenever a code enforcement officer determines that a violation has occurred or is occurring.

1.20.050 First contact.

The enforcement officer shall attempt to secure voluntary correction of the violation by contacting the property owner or other person responsible for the violation, in person, by telephone, or in writing, and, where possible, explaining the violation and requesting correction within a reasonable time on the basis of a mutual agreement.

1.20.060 Notice of violation.

If the violation is not corrected through mutual agreement after informal contact pursuant to NBMC 1.20.050, the enforcement officer shall issue a notice of violation to the person responsible for the violation. The following conditions and requirements apply to any notice of violation issued pursuant to this section:

A. Content. A notice of violation shall include the following:

1. The name and address of the person responsible for the violation;
2. The street address or description sufficient for identification of the premises;
3. A description of the violation and reference to the provision(s) of the city regulation(s) which have been violated;
4. The required corrective action and correction date;
5. A statement that, if the violation is not corrected by the correction date, the city may:
 - a. Assess monetary penalties pursuant to NBMC 1.20.100(A);
 - b. Issue a notice of civil infraction pursuant to NBMC 1.20.080; and

- c. Abate the unlawful condition and assess costs of abatement in accordance with NBMC 1.20.110; and

6. A statement that any penalties and costs of abatement incurred by the city pursuant to this chapter may be charged as a lien against the property and as a joint and severable personal obligation of any person responsible for the violation.

B. Service of Notice. The code enforcement officer shall serve the notice of violation upon the person responsible for the violation, either personally or by mailing a copy of the notice of violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

C. Optional Recording Procedure. The city may, at its discretion, record a notice of violation against the subject property.

D. Extension. Extensions of the correction date may be granted at the discretion of the code enforcement officer upon request by the person responsible for the violation and good cause shown.

1.20.070 Voluntary correction agreement.

In response to informal contact or a notice of violation, the person responsible for the violation may enter into a written voluntary correction agreement under which such person agrees to abate the violation within a specified time and according to specified conditions. The following conditions and requirements apply to any voluntary correction agreement entered into under this section.

A. Content. A voluntary correction agreement shall include the following:

1. The name and address of the person responsible for the violation;

2. The street address or other description sufficient for identification of the premises;

3. A description of the violation and reference to the regulation which has been violated;

4. The necessary corrective action to be taken and the correction date;

5. An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and

6. A statement that, if the terms of the voluntary correction agreement are not satisfied, the city may abate the violation and recover its costs and expenses (including attorneys' fees, expert witness fees, and court costs) pursuant to this chapter, and may also assess monetary penalties as allowed by this chapter.

B. Extension and Modification. When unforeseen circumstances delay correction under the conditions of the voluntary correction agreement, the enforcement officer may grant an extension of the time limit for correction or a modification of the required corrective action if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation and requests such extension or modification in a writing clearly establishing the need for such an extension. Any modification to a voluntary correction agreement shall be made in a writing signed by both parties.

C. Failure to Comply. If the terms of the voluntary correction are not met:

1. The city may abate the violation and assess costs and expenses of abatement in accordance with NBMC 1.20.110; and

2. The person responsible for the violation shall be assessed a daily monetary penalty in accordance with NBMC 1.20.100(A), commencing on the correction date set by the voluntary correction agreement.

1.20.080 Notice of civil infraction.

A. Issuance.

1. When the enforcement officer is unable to secure voluntary correction or execution of a voluntary correction agreement by the correction date set forth in a notice of violation pursuant to NBMC 1.20.060(A)(4), the enforcement officer may issue a notice of civil infraction in accordance with Chapter 7.80 RCW, which is incorporated herein by this reference, to the person responsible for the violation, and shall file such notice of infraction with the North Bend Municipal Court within 48 hours of issuance, excluding Saturdays, Sundays and holidays.

2. Notwithstanding the requirements of NBMC 1.20.050 and 1.20.060, the enforcement officer may issue a notice of civil infraction to the responsible person without having attempted to secure voluntary correction or issuing a notice of violation under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. The responsible person cannot be contacted or refuses to communicate or cooperate with the city in correcting the violation.

1.20.090 Reserved.

1.20.100 Monetary penalty.

A. Penalty Amount. The monetary penalty for each violation shall not exceed \$1,000 per day; provided, that the enforcement officer may double the monetary penalty schedule if the violation is a repeat violation as defined in NBMC 1.20.020(Q). In determining the amount of the monetary penalty for repeat violations, the enforcement officer shall consider the following factors:

- 1. Whether the person responsible for the violation responded to staff attempts to contact the person, and cooperated to correct the violation;
- 2. Whether the responsible person showed due diligence and/or substantial progress in correcting the violation;
- 3. Whether a genuine, factual code interpretation issue exists; and
- 4. Any other relevant factors.

B. Continued Duty to Correct. Payment of monetary penalties pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct the violation.

C. Collection of Monetary Penalty.

1. The monetary penalty constitutes a joint and severable personal obligation of the person responsible for the violation. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date of a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the premises, in the manner as set forth in NBMC 1.20.110(E).

2. The city attorney and city staff are authorized to take all actions available at law to collect the monetary penalty.

1.20.110 Abatement by the city.

A. The city may abate a condition which was caused by or continues to be a violation when:

- 1. The terms of a voluntary correction agreement entered into pursuant to NBMC 1.20.070 have not been met; or
- 2. A notice of violation has been issued pursuant to NBMC 1.20.060 and the required correction has not been completed by the correction date; or

3. A citation has been issued pursuant to NBMC 1.20.080, and deemed committed by a court of competent jurisdiction; or

4. The condition is subject to summary abatement as provided for in NBMC 1.20.110(B).

B. Summary Abatement. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety, or welfare, or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats. The city shall be entitled to recover any costs incurred for summary abatement after actual notice of same is provided to the person responsible for the violation.

C. Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek judicial process as it deems necessary to effect the removal or correction of such condition, and in the event the city must seek relief through the superior court for enforcement of a violation, the city shall be entitled to recovery of its costs and expenses of suit, including attorneys' fees and expert witness fees.

D. Recovery of Costs. The costs, as defined in NBMC 1.20.020(H), of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant, or other person entitled to control, use, and/or control of the property, and shall become due and payable to the city within 10 calendar days of the billing date. All such costs shall constitute a lien against the premises, as set forth in NBMC 1.20.110(E).

E. Lien – Authorized. The City of North Bend shall have a lien for any monetary penalty imposed and the costs of any abatement proceedings under this chapter against the real premises. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property, and shall be superior to all other liens,

except for state and county taxes, with which it shall be on a parity.

1. The code enforcement officer shall cause a claim for lien to be filed for recording within 90 days from the later of:

- a. The date that the monetary penalty is due; or
- b. The date the work is completed; or
- c. The date the nuisance is abated.

2. The claim of lien shall contain sufficient information regarding the notice of violation, as determined by the enforcement officer, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

3. Any such claim of lien shall be verified by the enforcement officer, and may be amended from time to time to reflect changed conditions.

1.20.120 Interference unlawful – Misdemeanor.

Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with the person responsible for the violation, in the performance of duties imposed by this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or imprisonment in a county jail for not more than 90 days, or by both such fine and imprisonment.

1.20.130 Stop work orders – Emergency orders.

A. Stop Work Orders. Whenever a continuing violation of this code will materially impair the code enforcement officer's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the enforcement officer may issue a stop work order specifying the violation and prohibiting any work or other activity at the premises.

B. Emergency Orders. Whenever any use or activity in violation of the North Bend Municipal Code threatens the health and safety of the occupants of the premises or any member of the public, the enforcement officer may issue an emergency order directing that the use or activity be

discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible.

1.20.140 Violation of stop work orders or emergency orders – Misdemeanor.

A. Any violation of a stop work order or emergency order constitutes a misdemeanor, and the enforcement officer may request a police officer to take criminal enforcement measures as authorized by law, without having attempted informal contact as provided in NBMC 1.20.050 or issued of a notice of violation as provided in NBMC 1.20.060. Punishment for a misdemeanor under this section shall be a fine not to exceed \$1,000 or imprisonment in a county jail for not more than 90 days, or by both such fine and imprisonment.

B. Any violation of a stop work order or emergency order is also hereby declared to be a nuisance, and the enforcement officer is authorized to enjoin or abate such nuisance summarily by any available legal or equitable means. Costs for the injunction or abatement shall be recovered by the city in the manner provided by law from the owner, tenant, occupant, manager, agent, or other responsible person.

1.20.150 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other lawful enforcement provisions authorized by the North Bend Municipal Code.

1.20.160 Criminal violations – General penalty – Separate offense.

A. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a criminal violation under the city code shall be punished by a fine of not more than \$5,000, or by imprisonment not to exceed one year, or by both such fine and imprisonment.

B. Each person shall be guilty of a separate offense for each and every day during any portion of which any criminal violation of any provision of the city code is

committed, continued or permitted by any such person, and shall be punishable accordingly.

Section 5. NBMC 8.08.050 (Penalty for Violation), Amended: North Bend Municipal Code Section 8.08.050 (Penalty for Violation) is hereby amended to read as follows:

8.08.050 Penalty for violation.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 6. NBMC 8.20.120 (Violations – Penalty – Separate, continuing offense), Amended: North Bend Municipal Code Section 8.20.120 (Violations – Penalty – Separate, continuing offense) is hereby amended to read as follows:

8.20.120 Violations – Penalty – Separate, continuing offense.

Any person, firm, co-partnership or corporation violating any of the provisions of this chapter shall each be guilty of a misdemeanor and upon conviction thereof shall be punished pursuant to NBMC 1.20.160. Any person convicted under this chapter who has a permit under this chapter shall have that permit revoked, and any person convicted under this chapter shall not be eligible for a retail fireworks sales permit under provisions of this chapter for a period of five years. A person or entity is guilty of a separate offense for each day during which he commits or continues a violation of any provision of this chapter.

Section 7. NBMC 8.26.150 (Penalties), Amended: North Bend Municipal Code Section 8.26.150 (Penalties) is hereby amended to read as follows:

8.26.150 Penalties.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 8. NBMC 8.38.080 (Enforcement), Amended: North Bend Municipal Code Section 8.38.080 (Enforcement) is hereby amended to read as follows:

8.38.080 Enforcement.

Violations of this chapter shall be enforced pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 9. NBMC 12.08.090 (Violation – Penalty), Amended: North Bend Municipal Code Section 12.08.090 (Violation – Penalty) is hereby amended to read as follows:

12.08.090 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 10. NBMC 12.12.060 (Violation – Penalty), Amended: North Bend Municipal Code Section 12.12.060 (Violation – Penalty) is hereby amended to read as follows:

12.12.060 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 11. NBMC 13.36.340 (Notice of Violation), Amended: North Bend Municipal Code Section 13.36.340 (Notice of Violation) is hereby amended to read as follows:

13.36.340 Notice of Violation.

In addition to the remedies, liens, and procedures set out in this chapter, any violation of this chapter may be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 12. NBMC 13.36.350 (Penalty for Violation), Amended: North Bend Municipal Code Section 13.36.350 (Penalty for Violation) is hereby amended to read as follows:

13.36.350 Penalty for Violation.

In addition to the remedies, liens, and penalties set out in this chapter, any violation of this chapter may be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 13. NBMC 15.08.020 (Violation – Penalties), Amended: North Bend Municipal Code Section 15.08.020 (Violation – Penalties) is hereby amended to read as follows:

15.08.020 Violation – Penalties.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 14. NBMC 15.36.160 (Violation – Penalty), Amended: North Bend Municipal Code Section 15.36.160 (Violation – Penalty) is hereby amended to read as follows:

15.36.160 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 15. NBMC 16.08.170 (Violations – Penalty), Amended: North Bend Municipal Code Section 16.08.170 (Violations – Penalty) is hereby amended to read as follows:

16.08.170 Violations – Penalty.

Any violation of this chapter shall be remedied based on the provisions as set forth in Chapter 1.20 NBMC.

Section 16. NBMC 17.08.170 (Violations and enforcement), Amended: North Bend Municipal Code Section 17.08.170 (Violations and enforcement) is hereby amended to read as follows:

17.08.170 Violations and enforcement.

Any person or entity who violates any provision of this title shall, in addition to any remedies and sanctions provided for under state law, be subject to the enforcement provisions of Chapter 1.20 NBMC.

Section 17. NBMC 18.32.010 (Designated), Amended: North Bend Municipal Code Section 18.32.010 (Designated) is hereby amended to read as follows:

18.32.010 Designated.

Any violation of this title shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 18. NBMC 18.32.030 (Building inspector – Action), Amended: North Bend Municipal Code Section 18.32.030 (Building inspector – Action) is hereby amended to read as follows:

18.32.030 Building inspector – Action.

Upon the building inspector’s awareness of any violation of any of the provisions of this title, the building inspector shall initiate proceedings to secure enforcement of the code set forth in Chapter 1.20 NBMC.

Section 19. NBMC 19.10.260 (Penalty), Amended: North Bend Municipal Code Section 19.10.260 (Penalty) is hereby amended to read as follows:

19.10.260 Penalty.

Any violation of this chapter shall be remedied pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 20. NBMC 19.24.040 (Enforcement), Amended: North Bend Municipal Code Section 19.24.040 (Enforcement) is hereby amended to read as follows:

19.24.040 Enforcement.

Violations of this chapter shall be subject to the enforcement provisions set forth in Chapter 1.20 NBMC. Buildings and other structures subject to this chapter may be abated under the provisions of Chapter 15.26 NBMC.

Nuisance violations of this chapter may be remedied pursuant to the provisions set forth in Chapter 8.08 NBMC. The city may also take any other legally permissible action deemed necessary to enforce this chapter.

The building official is hereby authorized to enforce this chapter. The building official is authorized and directed to adopt, promulgate, amend and rescind in accordance with the municipal codes of North Bend as now or hereafter amended, administrative rules consistent with this chapter.

Section 21. NBMC 19.24.060 (Minimum maintenance historic district revolving fund), Amended: North Bend Municipal Code Section 19.24.060 (Minimum maintenance historic district revolving fund) is hereby amended to read as follows:

19.24.060 Minimum maintenance historic district revolving fund.

There is hereby created in the city treasury a special fund designated as the “minimum maintenance historic district revolving fund,” from which fund shall be paid costs and expenses incurred by the city in connection with the repair, alteration or preservation of any substandard buildings, public ways, or other properties as defined by this chapter and ordered repaired, altered or preserved, and into which fund shall be deposited:

- A. Such sums as may be recovered by the city as reimbursement for costs and expenses of repair, alteration or improvement of historic buildings, structures, vacant lots and public ways found to be substandard;
- B. Such sums as may be recovered by the city as reimbursement for costs, including incidental expenses, of correcting the violation as set forth in NBMC 1.20.110(D);
- C. Such other sums as may by ordinance be appropriated to or designated as revenue of such fund; and
- D. Such other sums as made by gift, bequest or grants be deposited in such fund.

Section 22. New NBMC Section 20.01.007 (Land Use Violations – Enforcement), Adopted: A new North Bend Municipal Code Section 20.01.007 (Land Use Violations – Enforcement) is hereby adopted to read as follows:

20.01.007 Land use violations – Enforcement.

Land use violations, including but not limited to violations of Title 17, Land Segregation; Title 18, Zoning; and Title 19, Development Standards, shall be enforced pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 23. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 24. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF MAY, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk

ORDINANCE _____

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO CODE ENFORCEMENT, AND SPECIFICALLY REPEALING NORTH BEND MUNICIPAL CODE CHAPTER 1.20 ENTITLED “GENERAL PENALTY” AND ADOPTING A NEW CHAPTER 1.20 TO BE ENTITLED “CODE ENFORCEMENT”; REPEALING NORTH BEND MUNICIPAL CODE CHAPTER 20.10 AND SECTION 18.32.040; AMENDING NORTH BEND MUNICIPAL CODE SECTIONS 8.08.050, 8.20.120, 8.26.150, 8.38.080, 12.08.090, 12.12.060, 13.36.340, 13.36.350, 15.08.020, 15.36.160, 16.08.170, 17.08.170, 18.32.010, 18.32.030, 19.10.260, 19.24.040, AND 19.24.060; ADOPTING A NEW NORTH BEND MUNICIPAL CODE SECTION 20.01.007; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of North Bend seeks to promote the public health, safety, and general welfare of the municipality and the safe, orderly, and healthful development of the City; and

WHEREAS, in the interest of the public health, safety, and welfare, the City desires to clarify and revise the code enforcement provisions of the North Bend Municipal Code (“NBMC”) to govern the enforcement of civil code violations; and

WHEREAS, numerous additional housekeeping amendments are necessary in order to implement the new code enforcement provisions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Repealer: North Bend Municipal Code Chapter 1.20 (General Penalty) is hereby repealed in its entirety.

Section 2. Repealer: North Bend Municipal Code Chapter 20.10 (Land Use Violations) is hereby repealed in its entirety.

Section 3. Repealer: North Bend Municipal Code Section 18.32.040 (Appeal of hearing examiner decisions), is hereby repealed in its entirety.

Section 4. New NBMC Chapter 1.20 (Code Enforcement), Adopted: A new North Bend Municipal Code Chapter 1.20 (Code Enforcement) is hereby adopted to read as follows:

**Chapter 1.20
CODE ENFORCEMENT**

Sections:

- 1.20.010 Purpose.
- 1.20.020 Definitions.
- 1.20.030 Conflicting code provisions.
- 1.20.040 Applicability.
- 1.20.050 First contact.
- 1.20.060 Notice of violation.
- 1.20.070 Voluntary correction agreement.
- 1.20.080 Notice of civil infraction.
- 1.20.090 Reserved.
- 1.20.100 Monetary penalty – Civil violations.
- 1.20.110 Abatement by the city.
- 1.20.120 Interference unlawful – Misdemeanor.
- 1.20.130 Stop work orders – Emergency orders.
- 1.20.140 Violation of stop work orders or emergency orders – Misdemeanor.
- 1.20.150 Additional enforcement procedures.
- 1.20.160 Criminal violations – General penalty – Separate offense.

1.20.010 Purpose.

The purpose of this chapter is to provide city staff and the general public with notice of the procedure to be followed to enforce city regulations.

1.20.020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or they are more specifically defined in a section or subsection. Terms not defined shall be given their usual meaning.

A. “**Abate**” means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this code or a city regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized official determines is necessary in the interest of the general health,

safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

B. **“Act”** means doing or performing something.

C. **“City”** means the City of North Bend, Washington.

D. **“Civil penalty”** or **“monetary penalty,”** as used in any code, ordinance or regulation of the city, shall be deemed to have the same meanings as used in this chapter.

E. **“Code”** or **“NBMC”** means the North Bend Municipal Code.

F. **“Code enforcement officer”** or **“enforcement officer”** means the city’s code enforcement officer(s); the building official; building inspectors; construction inspectors; the fire marshal or his or her designee; fire inspectors; the chief of the North Bend police department or his or her designee; the director of the community development department or his or her designee; the director of the public works department or his or her designee; or any other person or persons assigned or directed by the mayor or his or her designee to enforce the regulations subject to the enforcement and penalty provisions of this chapter.

G. **“Correction date”** means a date or time by which corrective actions must be completed, as set forth in a voluntary correction agreement or notice of violation entered into or issued pursuant to this chapter.

H. **“Costs”** means, but is not limited to, personnel costs, both direct and indirect, and contract expenses incurred in abating a nuisance; a rental fee for city equipment used in abatement; hauling, storage, disposal, or destruction expenses related to abating a nuisance; legal expenses and attorneys’ fees associated with enforcement under this chapter, including civil judicial enforcement of abatement orders or in seeking abatement orders; costs incurred in documenting the violation; actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; costs of any required printing and mailing; and any other costs incurred by the city, excluding fees and

expenses associated with appeals authorized by this code or by state law.

I. **“Day”** or **“days”** means one or more calendar days, unless expressly stated otherwise in a given section or subsection. In addition, any portion of a 24-hour day shall constitute a full calendar day.

J. **“Notice of violation”** means a written statement, issued by a code enforcement officer, which contains the information required under NBMC 1.20.060(A) and which notifies a person that he or she is responsible for one or more violations of the North Bend Municipal Code or other regulation.

K. **“Omission”** means a failure to act.

L. **“Owner”** means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of a building or land.

M. **“Person”** means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human beings and organizational entities, any of the following pronouns may be used to describe a person: he, she, or it.

N. **“Person responsible for the violation”** or **“responsible person”** includes the plural forms thereof and means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a tenant or other person having the owner’s permission to occupy the premises; or any person who created, caused, participated in, or has allowed a violation to occur.

O. **“Premises”** means the building, structure, premises, and/or land upon or within which a violation has occurred or is occurring.

P. **“Regulation”** means and includes any of the following, as now enacted or hereafter amended:

1. All North Bend Municipal Code provisions;
2. All standards, regulations, and procedures adopted by the city pursuant to a city ordinance; and
3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement entered into with the city, pursuant to code provisions.

Q. **“Repeat violation”** means, as evidenced by the prior issuance of a correction notice or a notice of violation, a subsequent violation that has occurred on the same property or that has been committed by a person responsible for the prior violation elsewhere within the City of North Bend. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation. The violation of a written order of the hearing examiner that has been served as provided in this chapter shall constitute a repeat violation.

R. **“Violation”** or **“civil violation”** or **“civil infraction”** means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the city, and each day or any portion of a day during which a violation occurs or continues is a separate offense.

1.20.030 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the North Bend Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation. In the event of a conflict between this chapter and any other provision of this code or city ordinance providing for a civil penalty, the more specific provision shall control.

1.20.040 Applicability.

The procedures set forth in NBMC 1.20.050 through 1.20.140 apply whenever a code enforcement officer determines that a violation has occurred or is occurring.

1.20.050 First contact.

The enforcement officer shall attempt to secure voluntary correction of the violation by contacting the property owner or other person responsible for the violation, in person, by telephone, or in writing, and, where possible, explaining the violation and requesting correction within a reasonable time on the basis of a mutual agreement.

1.20.060 Notice of violation.

If the violation is not corrected through mutual agreement after informal contact pursuant to NBMC 1.20.050, the enforcement officer shall issue a notice of violation to the person responsible for the violation. The following conditions and requirements apply to any notice of violation issued pursuant to this section:

A. Content. A notice of violation shall include the following:

- 1. The name and address of the person responsible for the violation;
- 2. The street address or description sufficient for identification of the premises;
- 3. A description of the violation and reference to the provision(s) of the city regulation(s) which have been violated;
- 4. The required corrective action and correction date;
- 5. A statement that, if the violation is not corrected by the correction date, the city may:
 - a. Assess monetary penalties pursuant to NBMC 1.20.100(A);
 - b. Issue a notice of civil infraction pursuant to NBMC 1.20.080; and

- c. Abate the unlawful condition and assess costs of abatement in accordance with NBMC 1.20.110; and

6. A statement that any penalties and costs of abatement incurred by the city pursuant to this chapter may be charged as a lien against the property and as a joint and severable personal obligation of any person responsible for the violation.

B. Service of Notice. The code enforcement officer shall serve the notice of violation upon the person responsible for the violation, either personally or by mailing a copy of the notice of violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

C. Optional Recording Procedure. The city may, at its discretion, record a notice of violation against the subject property.

D. Extension. Extensions of the correction date may be granted at the discretion of the code enforcement officer upon request by the person responsible for the violation and good cause shown.

1.20.070 Voluntary correction agreement.

In response to informal contact or a notice of violation, the person responsible for the violation may enter into a written voluntary correction agreement under which such person agrees to abate the violation within a specified time and according to specified conditions. The following conditions and requirements apply to any voluntary correction agreement entered into under this section.

A. Content. A voluntary correction agreement shall include the following:

1. The name and address of the person responsible for the violation;
2. The street address or other description sufficient for identification of the premises;
3. A description of the violation and reference to the regulation which has been violated;
4. The necessary corrective action to be taken and the correction date;
5. An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and
6. A statement that, if the terms of the voluntary correction agreement are not satisfied, the city may abate the violation and recover its costs and expenses (including attorneys' fees, expert witness fees, and court costs) pursuant to this chapter, and may also assess monetary penalties as allowed by this chapter.

B. Extension and Modification. When unforeseen circumstances delay correction under the conditions of the voluntary correction agreement, the enforcement officer may grant an extension of the time limit for correction or a modification of the required corrective action if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation and requests such extension or modification in a writing clearly establishing the need for such an extension. Any modification to a voluntary correction agreement shall be made in a writing signed by both parties.

C. Failure to Comply. If the terms of the voluntary correction are not met:

1. The city may abate the violation and assess costs and expenses of abatement in accordance with NBMC 1.20.110; and

2. The person responsible for the violation shall be assessed a daily monetary penalty in accordance with NBMC 1.20.100(A), commencing on the correction date set by the voluntary correction agreement.

1.20.080 Notice of civil infraction.

A. Issuance.

1. When the enforcement officer is unable to secure voluntary correction or execution of a voluntary correction agreement by the correction date set forth in a notice of violation pursuant to NBMC 1.20.060(A)(4), the enforcement officer may issue a notice of civil infraction in accordance with Chapter 7.80 RCW, which is incorporated herein by this reference, to the person responsible for the violation, and shall file such notice of infraction with the North Bend Municipal Court within 48 hours of issuance, excluding Saturdays, Sundays and holidays.

2. Notwithstanding the requirements of NBMC 1.20.050 and 1.20.060, the enforcement officer may issue a notice of civil infraction to the responsible person without having attempted to secure voluntary correction or issuing a notice of violation under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. The responsible person cannot be contacted or refuses to communicate or cooperate with the city in correcting the violation.

1.20.090 Reserved.

1.20.100 Monetary penalty.

A. Penalty Amount. The monetary penalty for each violation shall not exceed \$1,000 per day; provided, that the enforcement officer may double the monetary penalty schedule if the violation is a repeat violation as defined in NBMC 1.20.020(Q). In determining the amount of the monetary penalty for repeat violations, the enforcement officer shall consider the following factors:

1. Whether the person responsible for the violation responded to staff attempts to contact the person, and cooperated to correct the violation;

2. Whether the responsible person showed due diligence and/or substantial progress in correcting the violation;

3. Whether a genuine, factual code interpretation issue exists; and

4. Any other relevant factors.

B. Continued Duty to Correct. Payment of monetary penalties pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct the violation.

C. Collection of Monetary Penalty.

1. The monetary penalty constitutes a joint and severable personal obligation of the person responsible for the violation. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date of a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the premises, in the manner as set forth in NBMC 1.20.110(E).

2. The city attorney and city staff are authorized to take all actions available at law to collect the monetary penalty.

1.20.110 Abatement by the city.

A. The city may abate a condition which was caused by or continues to be a violation when:

1. The terms of a voluntary correction agreement entered into pursuant to NBMC 1.20.070 have not been met; or

2. A notice of violation has been issued pursuant to NBMC 1.20.060 and the required correction has not been completed by the correction date; or

3. A citation has been issued pursuant to NBMC 1.20.080, and deemed committed by a court of competent jurisdiction; or

4. The condition is subject to summary abatement as provided for in NBMC 1.20.110(B).

B. Summary Abatement. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety, or welfare, or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats. The city shall be entitled to recover any costs incurred for summary abatement after actual notice of same is provided to the person responsible for the violation.

C. Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek judicial process as it deems necessary to effect the removal or correction of such condition, and in the event the city must seek relief through the superior court for enforcement of a violation, the city shall be entitled to recovery of its costs and expenses of suit, including attorneys' fees and expert witness fees.

D. Recovery of Costs. The costs, as defined in NBMC 1.20.020(H), of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant, or other person entitled to control, use, and/or control of the property, and shall become due and payable to the city within 10 calendar days of the billing date. All such costs shall constitute a lien against the premises, as set forth in NBMC 1.20.110(E).

E. Lien – Authorized. The City of North Bend shall have a lien for any monetary penalty imposed and the costs of any abatement proceedings under this chapter against the real premises. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property, and shall be superior to all other liens,

except for state and county taxes, with which it shall be on a parity.

1. The code enforcement officer shall cause a claim for lien to be filed for recording within 90 days from the later of:

- a. The date that the monetary penalty is due; or
- b. The date the work is completed; or
- c. The date the nuisance is abated.

2. The claim of lien shall contain sufficient information regarding the notice of violation, as determined by the enforcement officer, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

3. Any such claim of lien shall be verified by the enforcement officer, and may be amended from time to time to reflect changed conditions.

1.20.120 Interference unlawful – Misdemeanor.

Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with the person responsible for the violation, in the performance of duties imposed by this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or imprisonment in a county jail for not more than 90 days, or by both such fine and imprisonment.

1.20.130 Stop work orders – Emergency orders.

A. Stop Work Orders. Whenever a continuing violation of this code will materially impair the code enforcement officer's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the enforcement officer may issue a stop work order specifying the violation and prohibiting any work or other activity at the premises.

B. Emergency Orders. Whenever any use or activity in violation of the North Bend Municipal Code threatens the health and safety of the occupants of the premises or any member of the public, the enforcement officer may issue an emergency order directing that the use or activity be

discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible.

1.20.140 Violation of stop work orders or emergency orders – Misdemeanor.

A. Any violation of a stop work order or emergency order constitutes a misdemeanor, and the enforcement officer may request a police officer to take criminal enforcement measures as authorized by law, without having attempted informal contact as provided in NBMC 1.20.050 or issued of a notice of violation as provided in NBMC 1.20.060. Punishment for a misdemeanor under this section shall be a fine not to exceed \$1,000 or imprisonment in a county jail for not more than 90 days, or by both such fine and imprisonment.

B. Any violation of a stop work order or emergency order is also hereby declared to be a nuisance, and the enforcement officer is authorized to enjoin or abate such nuisance summarily by any available legal or equitable means. Costs for the injunction or abatement shall be recovered by the city in the manner provided by law from the owner, tenant, occupant, manager, agent, or other responsible person.

1.20.150 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other lawful enforcement provisions authorized by the North Bend Municipal Code.

1.20.160 Criminal violations – General penalty – Separate offense.

A. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a criminal violation under the city code shall be punished by a fine of not more than \$5,000, or by imprisonment not to exceed one year, or by both such fine and imprisonment.

B. Each person shall be guilty of a separate offense for each and every day during any portion of which any criminal violation of any provision of the city code is

committed, continued or permitted by any such person, and shall be punishable accordingly.

Section 5. NBMC 8.08.050 (Penalty for Violation), Amended: North Bend Municipal Code Section 8.08.050 (Penalty for Violation) is hereby amended to read as follows:

8.08.050 Penalty for violation.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 6. NBMC 8.20.120 (Violations – Penalty – Separate, continuing offense), Amended: North Bend Municipal Code Section 8.20.120 (Violations – Penalty – Separate, continuing offense) is hereby amended to read as follows:

8.20.120 Violations – Penalty – Separate, continuing offense.

Any person, firm, co-partnership or corporation violating any of the provisions of this chapter shall each be guilty of a misdemeanor and upon conviction thereof shall be punished pursuant to Chapters NBMC 1.20, 160 and 18.36 NBMC. Any person convicted under this chapter who has a permit under this chapter shall have that permit revoked, and any person convicted under this chapter shall not be eligible for a retail fireworks sales permit under provisions of this chapter for a period of five years. A person or entity is guilty of a separate offense for each day during which he commits or continues a violation of any provision of this chapter.

Section 7. NBMC 8.26.150 (Penalties), Amended: North Bend Municipal Code Section 8.26.150 (Penalties) is hereby amended to read as follows:

8.26.150 Penalties.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 8. NBMC 8.38.080 (Enforcement), Amended: North Bend Municipal Code Section 8.38.080 (Enforcement) is hereby amended to read as follows:

8.38.080 Enforcement.

Violations of this chapter ~~may be remedied in accordance with~~ shall be enforced pursuant to the provisions set forth in Chapter 20.101.20 NBMC.

Section 9. NBMC 12.08.090 (Violation – Penalty), Amended: North Bend Municipal Code Section 12.08.090 (Violation – Penalty) is hereby amended to read as follows:

12.08.090 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 10. NBMC 12.12.060 (Violation – Penalty), Amended: North Bend Municipal Code Section 12.12.060 (Violation – Penalty) is hereby amended to read as follows:

12.12.060 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 11. NBMC 13.36.340 (Notice of Violation), Amended: North Bend Municipal Code Section 13.36.340 (Notice of Violation) is hereby amended to read as follows:

13.36.340 Notice of Violation.

In addition to the remedies, liens, and procedures set out in this chapter, any violation of this chapter may be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 12. NBMC 13.36.350 (Penalty for Violation), Amended: North Bend Municipal Code Section 13.36.350 (Penalty for Violation) is hereby amended to read as follows:

13.36.350 Penalty for Violation.

In addition to the remedies, liens, and penalties set out in this chapter ~~and Chapter 20.10 NBMC~~, any violation of this chapter may be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 13. NBMC 15.08.020 (Violation – Penalties), Amended: North Bend Municipal Code Section 15.08.020 (Violation – Penalties) is hereby amended to read as follows:

15.08.020 Violation – Penalties.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 14. NBMC 15.36.160 (Violation – Penalty), Amended: North Bend Municipal Code Section 15.36.160 (Violation – Penalty) is hereby amended to read as follows:

15.36.160 Violation – Penalty.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 15. NBMC 16.08.170 (Violations – Penalty), Amended: North Bend Municipal Code Section 16.08.170 (Violations – Penalty) is hereby amended to read as follows:

16.08.170 Violations – Penalty.

Any violation of this chapter shall be remedied based on the provisions as set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 16. NBMC 17.08.170 (Violations and enforcement), Amended: North Bend Municipal Code Section 17.08.170 (Violations and enforcement) is hereby amended to read as follows:

17.08.170 Violations and enforcement.

Any person or entity who violates any provision of this title shall, in addition to any remedies and sanctions provided for under state law, be subject to the enforcement provisions of Chapter ~~20.10~~1.20 NBMC.

Section 17. NBMC 18.32.010 (Designated), Amended: North Bend Municipal Code Section 18.32.010 (Designated) is hereby amended to read as follows:

18.32.010 Designated.

Any violation of this title shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter ~~20.10~~1.20 NBMC.

Section 18. NBMC 18.32.030 (Building inspector – Action), Amended: North Bend Municipal Code Section 18.32.030 (Building inspector – Action) is hereby amended to read as follows:

18.32.030 Building inspector – Action.

Upon the building inspector's awareness of any violation of any of the provisions of this title, the building inspector shall initiate proceedings to secure enforcement of the code set forth in ~~as outlined under~~ Chapter ~~20.10~~1.20 NBMC.

Section 19. NBMC 19.10.260 (Penalty), Amended: North Bend Municipal Code Section 19.10.260 (Penalty) is hereby amended to read as follows:

19.10.260 Penalty.

Any violation of this chapter shall be remedied pursuant to ~~based on~~ the provisions ~~as~~ set forth in Chapter 1.20 NBMC ~~20.10.100~~.

Section 20. NBMC 19.24.040 (Enforcement), Amended: North Bend Municipal Code Section 19.24.040 (Enforcement) is hereby amended to read as follows:

19.24.040 Enforcement.

Violations of this chapter shall be subject to the enforcement provisions set forth in Chapter ~~20.10~~1.20 NBMC. Buildings and other structures subject to this chapter may be abated under the provisions of Chapter 15.26 NBMC.

Nuisance violations of this chapter may be remedied subject pursuant to the provisions set forth in Chapter 8.08 NBMC. The city may also take any other legally permissible action deemed necessary to enforce this chapter.

The building official is hereby authorized to enforce this chapter. The building official is authorized and directed to adopt, promulgate, amend and rescind in accordance with the municipal codes of North Bend as now or hereafter amended, administrative rules consistent with this chapter.

Section 21. NBMC 19.24.060 (Minimum maintenance historic district revolving fund), Amended: North Bend Municipal Code Section 19.24.060 (Minimum maintenance historic district revolving fund) is hereby amended to read as follows:

19.24.060 Minimum maintenance historic district revolving fund.

There is hereby created in the city treasury a special fund designated as the “minimum maintenance historic district revolving fund,” from which fund shall be paid costs and expenses incurred by the city in connection with the repair, alteration or preservation of any substandard buildings, public ways, or other properties as defined by this chapter and ordered repaired, altered or preserved, and into which fund shall be deposited:

A. Such sums as may be recovered by the city as reimbursement for costs and expenses of repair, alteration or improvement of historic buildings, structures, vacant lots and public ways found to be substandard;

B. Such sums as may be recovered by the city as reimbursement for costs, including incidental expenses, of correcting the violation as ~~stated~~ set forth in NBMC ~~20.10.1501.20.110(D)~~;

C. Such other sums as may by ordinance be appropriated to or designated as revenue of such fund; and

D. Such other sums as made by gift, bequest or grants be deposited in such fund.

Section 22. New NBMC Section 20.01.007 (Land Use Violations – Enforcement), Adopted: A new North Bend Municipal Code Section 20.01.007 (Land Use Violations – Enforcement) is hereby adopted to read as follows:

20.01.007 Land use violations – Enforcement.

Land use violations, including but not limited to violations of Title 17, Land Segregation; Title 18, Zoning; and Title 19, Development Standards, shall be enforced pursuant to the provisions set forth in Chapter 1.20 NBMC.

Section 23. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 24. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS ____ DAY OF _____, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk



City Council Agenda Bill

SUBJECT:		Agenda Date: May 3, 2016	AB16-049	
An Ordinance Increasing the Rates for Professional, Administrative and Support Costs and Amending the Taxes, Rates & Fees Schedule		Department/Committee/Individual		
		Mayor Ken Hearing		
		City Administrator – Londi Lindell		
		City Attorney - Mike Kenyon		
		City Clerk – Susie Oppedal		
		Community & Economic Development – Gina Estep		
		Finance – Dawn Masko		X
		Public Works – Mark Rigos		
Cost Impact: N/A				
Fund Source: N/A				
Timeline: Immediate				
Attachments: Ordinance (redline)				
<p>SUMMARY STATEMENT:</p> <p>The Rates for Professional, Administrative Costs, and Support Costs were last updated in May 2015. These rates are utilized for charging staff time spent processing land development proposals and land use related items to the developers requesting the services. In order to ensure that the cost of providing these services to developers is being accurately portrayed and charged, Council concurred that these rates should be reviewed and updated as needed on an annual basis. Typically this annual adjustment would occur earlier in the year; however it was delayed this year while the Collective Bargaining Agreement for the Office-Clerical-Technical employees was adopted.</p> <p>City personnel costs and associated overhead costs have increased since the 2015 rates were adopted. The proposed revisions to the City’s rate schedule for professional, administrative and supports costs utilizes current personnel and overhead costs and recognizes these increases.</p> <p>Changes in these rates will be reflected in the Stand-Along Taxes, Rates and Fees Schedule upon passage of the ordinance. The current Taxes Rates & Fees Schedule is available on the homepage of the City website at http://northbendwa.gov.</p>				
<p>COMMITTEE REVIEW AND RECOMMENDATION: The Finance & Administration Committee will review this item at their May 3, 2016 meeting.</p>				
<p>RECOMMENDED ACTION: MOTION to approve AB16-049, an ordinance increasing the Professional, Administrative and Support Cost Rates and amending the Taxes, Rates & Fees Schedule, as a first and final reading.</p>				
RECORD OF COUNCIL ACTION				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		
May 3, 2016				

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, INCREASING THE RATES FOR PROFESSIONAL, ADMINISTRATIVE COSTS AND SUPPORT COSTS, AND AMENDING THE TAXES, RATES AND FEES SCHEDULE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council adopted Ordinance 1084, effective November 2, 1999, which adopted a Taxes, Rates and Fees Schedule; and

WHEREAS, said Taxes, Rates and Fees Schedule was last amended by Ordinance 1573, effective January 1, 2016; and

WHEREAS, the City Council last increased hourly rates for City staff time to process land development proposals in May 2015; and costs to provide these services have increased since then; and

WHEREAS, City staff recommends and the City Council agrees that these hourly rates should be reviewed and updated as needed on an annual basis in order to adequately reflect the cost of providing the services; and

WHEREAS, the City Council has reviewed hourly rates for City staff time to process land development proposals, and wishes to update fees in NBMC 20.09.050 (A), rates for professional, administrative costs, and support cost, per hour, as referenced in the Taxes, Rates, and Fees Schedule; and

WHEREAS, the City now desires to amend the Taxes, Rates & Fees Schedule to reflect the changes accordingly;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Amendment of Fees Schedule. The Taxes, Rates and Fees Schedule as adopted by Ordinance 1084 and last amended by Ordinance 1573, is amended in part, by inserting the following provisions under section 20.09.050(A):

20.09.050 (A) Rates for Professional, Administrative Costs, and Support Costs (per hour)

Rates for Professional, Administrative Costs, and Support Costs
(per hour)

City Administrator	\$ 167.00 <u>174.00</u>
Finance Director	153.00 <u>164.00</u>
City Clerk	129.00 <u>132.00</u>
Deputy Finance Director	129.00 <u>135.00</u>
Staff Accountant	103.00 <u>116.00</u>
Records Coordinator	98.00 <u>116.00</u>
Public Works Director	173.00 <u>184.00</u>
City Engineer	466.00 <u>173.00</u>
Assistant City Engineer	158.00
Public Works Project Manager	158.00
Public Works Supervisor	138.00 <u>142.00</u>
Public Works Office Coordinator	114.00
Community & Economic Development Director	157.00 <u>162.00</u>
Building Official	142.00
Senior Planner	125.00 <u>128.00</u>
Associate Planner	118.00
Building Inspector	115.00 <u>117.00</u>
Community & Economic Development Permit Tech	98.00
GIS Tech/CADD	114.00 <u>118.00</u>
City Attorney	per contract
Consultants	per contract
Mailing(s)	actual cost
Other	actual cost

Section 2. Update of Taxes, Rates & Fees Schedule. The Taxes, Rates and Fees Schedule, effective as of January 1, 2016, is amended to reflect the amendments set forth in this ordinance, and is incorporated herein as if set forth in full. Such amended Taxes, Rates and Fees Schedule is attached hereto as **Exhibit A** and supersedes and replaces all other prior versions.

Section 3. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-

emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF MAY, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk



City Council Agenda Bill

SUBJECT:	Agenda Date: May 3, 2016	AB16-050
Ordinance Amending the North Bend Municipal Code Section 5.04 Relating to Business & Occupation Taxes	Department/Committee/Individual	
	Mayor Ken Hearing	
	City Administrator – Londi Lindell	
	City Attorney - Mike Kenyon	
	City Clerk – Susie Oppedal	
	Community & Economic Development – Gina Estep	
	Finance Director – Dawn Masko	X
	Public Works Director – Mark Rigos	
Cost Impact: N/A		
Fund Source: General Fund		
Timeline:		
Attachments: Ordinance, North Bend B&O Tax Code’s Deviations from Core Model Ordinance		
SUMMARY STATEMENT:		
<p>The City Council previously amended NBMC Section 5.04 to adopt the 2012 changes to the Model B&O Tax Ordinance as required by State law. The Model Ordinance expressly allows municipalities to adopt a square footage tax that is not a part of the Model Ordinance. A square footage tax has been discussed with the Finance & Administration Committee multiple times over the past two years and with the Council at a work study on November 17, 2015. Following Council discussion, City staff met with representatives from local businesses who would be impacted by the tax and made revisions to the proposed rate structure in the ordinance. Following subsequent discussions at Finance & Administration meetings, the final tier rate was lowered from \$0.05 per square foot per quarter to \$0.04 per square foot per quarter and a quarterly exemption for vacant buildings was added.</p> <p>While the City currently imposes Business and Occupation taxes, many administrative and support functions as well as non-retail activities and services are exempt. A number of other cities, including Bellevue, Kent and DuPont, have adopted a square footage tax to better align the amount of the tax with the service impacts created by the activity.</p> <p>The proposed ordinance would amend the North Bend Municipal Code to create a square footage tax with tiered rates based on the square footage of the buildings subject to the tax. The first 25,000 square feet would be at the rate of \$0.15 per square foot per quarter, from 25,001 thru 50,000 square feet would be at the rate of \$0.10 per square foot per quarter, and all square footage beyond 50,000 square feet would be at the rate of \$0.04 per square foot per quarter. This tax would apply to all mini-storage facilities regardless of their square footage, and to manufacturing, warehouse and industrial-type facilities with a square footage of 10,000 or more square feet. If a business is subject to the square footage B&O tax, all square feet is considered taxable. Businesses that are subject to this tax will be able to deduct any B&O tax paid to the City on gross receipts under other sections of the existing North Bend B&O tax code, such that the square footage tax will be owed only if the square footage tax exceeds the gross receipts tax, in which case the taxpayer shall remit only the square footage tax in excess of the gross receipts tax payable.</p> <p>Additionally, if a building is vacant for an entire quarter and the building owner files a certificate of vacancy with the City, the building will be exempt from the square footage B&O tax for that quarter. The property owner may not claim this exemption for more than 2 years.</p> <p>It is anticipated that the adoption of a square footage B&O tax will produce an estimated \$170,000 annually. The Finance & Administration Committee has recommended that the additional revenue generated from the square footage B&O tax be dedicated to the maintenance of the City’s street infrastructure, with a primary emphasis on pavement management. The City’s Transportation Improvement Plan (TIP) includes \$400,000 annually for pavement management; however, current City resources dedicated to pavement management are only \$100,000. The proceeds from the square footage B&O tax would help address, but still not fully fund, this infrastructure program.</p>		

City Council Agenda Bill

COMMITTEE REVIEW AND RECOMMENDATION: The Finance & Administration Committee has reviewed this item at multiple meetings, most recently on April 5, 2016 and recommends approval and placement on the Consent Agenda.

RECOMMENDED ACTION: **MOTION to approve AB16-050, an ordinance amending North Bend Municipal Code Section 5.04, as a first and final reading.**

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 3, 2016		

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO BUSINESS AND OCCUPATION TAXES AND ESTABLISHING A NEW SQUARE FOOTAGE TAX; AMENDING NBMC SECTION 5.04.050; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35A.82.020 authorizes code cities to license businesses for the purpose of creating revenue; and

WHEREAS, the City of North Bend (“City”) has, since 1960, levied a business license tax (known as a business and occupation (B&O) tax) on persons engaging in business within the City, to fund, among other things, the costs of governmental services needed by such businesses; and

WHEREAS, some businesses operate warehouses, distribution centers, self-storage facilities, and/or light manufacturing and research uses within North Bend that require governmental services and that create general City service and transportation infrastructure impacts, but which are largely exempt from existing B&O taxes; and

WHEREAS, other Washington cities utilize different forms and combinations of B&O taxes, including a business tax based upon square footage of space used for primarily non-retail activities and services and support activities; and

WHEREAS, the City Council of the City of North Bend has determined that it is in the public interest to impose a similar tax on the square footage of warehouse/distribution, self-storage facilities, and/or light manufacturing and research space (“the square footage tax”); and

WHEREAS, the new square footage tax is intended to generate additional revenue to support City services and maintain, repair and operate the City’s existing transportation network in order to fairly allocate the cost to provide those services and to maintain that infrastructure to those business entities that contribute most to the use and degradation of City streets; and

WHEREAS, the City desires to tier the new square footage tax in order to allocate the obligation upon such businesses without overburdening owners and operators of large-scale spaces; and

WHEREAS, the City finds that vacant buildings contribute less to the use and degradation of City streets and therefore desires to exempt such buildings from the new square footage tax for up to two years of continued vacancy; and

WHEREAS, the City’s right to impose B&O taxes, including the square footage tax, is a permissible form of business licensing for revenue purposes and therefore is not a tax on property subject to the uniformity requirement in Article VII, Section 1 of the Washington state constitution (*Tacoma v. Fiberchem, Inc.*, 44 Wn.App 538 (1986)); and

WHEREAS, in 2003, the Legislature enacted Chapter 35.102 RCW, which required cities with local B&O taxes to implement a modified B&O tax model ordinance with certain mandatory provisions, and also permits cities to adopt their own provisions for tax exemptions, credits, and deductions; and

WHEREAS, on August, 5, 2003, the City adopted Ordinance No. 1192 adopting a modified B&O tax model ordinance as required by state law; and

WHEREAS, RCW 35.102.040(4) requires that cities deviating from the nonmandatory provisions of the model B&O tax ordinance make available to the public a description of such differences; and

WHEREAS, RCW 35.21.706 requires that ordinances imposing a new B&O tax shall be subject to specific referendum procedures described therein;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC 5.04.050 (Imposition of the tax – Tax or fee levied), Amended. North Bend Municipal Code Section 5.04.050 (Imposition of the tax – Tax or fee levied) is hereby amended to read as follows:

5.04.050 Imposition of the tax – Tax or fee levied.

A. Gross Receipts Tax. Except as provided in subsection C 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 “gross receipts tax”). The gross receipts 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 byproducts, as the case may be, as follows:

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

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 byproducts, manufactured within the city, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

3. Upon every person engaging within the city in the business of making sales at wholesale, 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 two-tenths of one percent.

4. Upon every person engaging within the city in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) 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 two-tenths of one percent.

5. Upon every person engaging within the city in the business of making sales at retail, 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 two-tenths of one percent.

6. Upon every person engaging within the city in the business of sales of retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of two-tenths of one percent.

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, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent. 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.

B. Square Footage Tax. Except as provided in subsection C of this section, there is hereby levied upon and shall be collected from every person who leases, own, occupies, or otherwise maintains a structure within the city for purposes of engaging in business within the city, a tax for the act or privilege of engaging in business activities within the city (the "square footage tax"). The tax shall be in amounts to be determined by application of rates against square footage of warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space as follows:

1. Subject to the deductions established in subsection (B)(5) of this section, the amount of the tax due shall be equal to the sum of the number of square feet of floor area for each warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city multiplied by the rate(s) shown below per quarterly period for each calendar year:

a. The first 25,000 square feet shall be taxed at a rate of fifteen cents (\$0.15);

b. The second 25,000 square feet (25,001 thru 50,000 sq. ft.) shall be taxed at a rate of ten cents (\$0.10);

c. All square footage beyond 50,000 (50,001+ sq. ft.) shall be taxed at a rate of four cents (\$.04).

2. For purposes of this section, the following terms shall have the meanings set forth below:

a. "Industrial" means suitable for the manufacturing, processing, assembling, packaging or fabricating of previously prepared materials; manufacturing and processing of products predominately from extracted or raw materials; wrecking; storage activities; research and development activities; and warehousing.

b. "Light manufacturing" means a light industrial business where all processing, fabricating, assembly or disassembly of items takes place wholly within an enclosed building.

c. "Research" means businesses associated with research and development activities, high technology, software engineering, biotechnology, electronic components and board systems engineering, development, and application, and similar business activities.

d. "Self-storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence.

e. "Warehouse/Distribution" means a building or structure, or any part thereof, in which goods, wares, merchandise, commodities or equipment are stored, whether or not for compensation, for eventual distribution and/or furtherance of engaging in business.

3. For purposes of this section, the square footage shall be calculated to the nearest square foot and shall be computed by measuring all floor space, including mezzanines and lofts, to the inside finish of permanent outer building walls and shall include space used by columns and projections.

4. For any person with more than one location within the city, the floor space for all locations within the city shall be combined. When a person rents space to another person, the person occupying the rental space is responsible for the square footage tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

5. If, in any quarterly period, a person is subject to both the square footage tax imposed by this subsection (B) and the gross receipts tax imposed by subsection (A) of this section, then the amount of square footage tax due for the quarterly period shall be equal to only the portion of the square footage tax that exceeds the amount of the gross receipts tax due for the same quarterly period.

C. Exemption(s) and Threshold(s).

1. Gross receipts exemption. The gross receipts tax imposed in subsection (A) of this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, from all activities conducted within the city during

any calendar year are equal to or less than \$20,000, or are equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

2. Square footage exemption. The square footage tax imposed in subsection (B) of this section shall not apply to any warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city which is vacant during the entire quarterly reporting period in which the tax would otherwise be due; provided, that the taxpayer must claim the exemption by filing a certificate of vacancy during each quarterly period that the space remains vacant, and provided further that no person may claim this exemption for more than eight (8) consecutive quarterly periods.

3. Square footage threshold.

a. The square footage tax imposed in subsection (B) of this section shall not apply to any person whose total floor area of business space within the city is less than ten thousand (10,000) square feet of warehouse/distribution, industrial, and/or light manufacturing or research space; provided, however, that the threshold established in this subsection (C)(3) does not apply to self-storage facilities, and all square footage of self-storage facilities is subject to the square footage tax.

b. This is a threshold and not an exemption. If the square footage tax applies, it applies to all such business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

D. Rules. The director may promulgate rules and regulations regarding the manner, means, and method for calculating any tax imposed under this section.

Section 2. Deviation from Model B&O Tax Ordinance. Pursuant to RCW 35.102.040(4), the City shall make a description available to the public, both in written and electronic form, of the City's deviations from the nonmandatory provisions of the model B&O tax ordinance in a form substantially similar to Exhibit A, *North Bend B&O Tax Code's Deviations from Core Model Ordinance*, which is attached hereto and incorporated by this reference.

Section 3. Referendum. This ordinance is subject to the referendum procedure specified in RCW 35.21.706. A referendum petition may be filed within seven days of passage of this ordinance with the City Clerk, who is the filing officer of the City. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the City, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260(2).

Pursuant to RCW 35.21.706, the referendum procedure described herein shall be exclusive and shall supersede the procedures provided under Chapters 35.17 and 35A.11 RCW and all other statutory provisions for initiative or referendum which might otherwise apply.

Section 4. Update of Taxes, Rates & Fees Schedule. The Taxes, Rates & Fees Schedule, adopted by Ordinance 1084 and last amended by Ordinance 1573, effective as of January 1, 2016, is amended to reflect the taxes and rates as set forth in this Ordinance, and to reflect current codification of the City’s B&O Tax Code, as follows:

5.04	Business License and Business Occupation Tax	
5.04.015(A)	Business License Registration Fee - Initial Application	\$35.00
5.04.015(B)	Business at two or more places	\$25.00 for each place of business
5.04.015(C)	Changes in the place of business	\$25.00
5.04.015(D)	Annual Business License Registration Fee (after first year)	\$25.00
5.04.015(E)	Additional Administrative Assessment after January 1st	25% of license fee plus interest at the rate of 12% per year
5.04.050(A)(1)	Extractor	gross sales x .002
5.04.050(A)(2)	Manufacturer	gross sales x .002
5.04.050(A)(3)	Wholesale	gross proceeds x .002
5.04.050(A)(4)	Printing and/or Publishing	gross proceeds x .002
5.04.050(A)(5)	Sales at Retail	gross proceeds x .002
5.04.050(A)(6)	Sales of Retail Services	gross proceeds x .002
5.04.050(A)(7)	All Others	gross income x .002
5.04.050(B)(1)(a)	Square Footage – first 25,000 sq. ft.	\$0.15/sq. ft. quarterly
5.04.050(B)(1)(b)	Square Footage – second 25,000 sq. ft. (25,001 thru 50,000 sq. ft.)	\$0.10/sq. ft. quarterly
5.04.050(B)(1)(c)	Square Footage – all square footage beyond 50,000 (50,001+ sq. ft.)	\$0.04/sq. ft. quarterly
5.04.060	Doing Business with the City	gross price x .002

NOTE: Refer to NBMC Chapter 5.04 for allowable credits, exemptions, thresholds and deductions

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such

decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3rd DAY OF MAY, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk

**EXHIBIT A:
North Bend B&O Tax Code's Deviations from Core Model Ordinance**

CITATION TO B&O TAX CODE PROVISION	SUMMARY OF CHANGE FROM MODEL B&O TAX ORDINANCE	
	CITY CODE OMITTS THE FOLLOWING DISCRETIONARY PROVISIONS PROVIDED IN MODEL ORDINANCE:	CITY CODE INCLUDES ADDITIONAL PROVISIONS (NOT PROVIDED IN MODEL ORDINANCE) AS FOLLOWS:
NBMC 5.04.015 Business license required		Every person who engages in business activities within the City shall obtain a business license.
NBMC 5.04.030 Definitions	Discretionary definitions for: Advance, reimbursement Agricultural product; farmer Artistic or cultural organization Competitive telephone service Consumer In this City; within this City Newspaper; magazine; periodical Non-profit corporation or non-profit organization Office; place of business Precious metal bullion or monetized bullion Processing for hire Product; byproduct Royalties Software; prewritten software; custom software; customization of canned software; master copies; retained rights Tuition fee	
Model Provision .040	Discretionary provision regarding sales and service by agents	
NBMC 5.04.050(A) Gross receipts tax		Tax rates for the following classifications: Extractor: .2% (.002) Manufacturer: .2% (.002) Wholesale: .2% (.002) Printing and Publishing: .2% (.002) Retail: .2% (.002) Retail Services: .2% (.002) Other: .2% (.002)
NBMC 5.04.050(B) Square footage tax		Quarterly square footage tax rate for warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space: \$0.15/sq. ft. for first 25,000 sq. ft. \$0.10/sq. ft. for second 25,000 sq. ft. \$0.04/sq. ft. for all square footage above 50,000 sq. ft.
NBMC 5.04.050(C) Gross receipts exemption / Square footage threshold		Square footage tax only applies to spaces 10,000 square feet or greater; provided that this threshold does not apply to self-storage facilities space (all self-storage facilities space is subject to square footage tax)

CITATION TO B&O TAX CODE PROVISION	SUMMARY OF CHANGE FROM MODEL B&O TAX ORDINANCE	
	CITY CODE OMITTS THE FOLLOWING DISCRETIONARY PROVISIONS PROVIDED IN MODEL ORDINANCE:	CITY CODE INCLUDES ADDITIONAL PROVISIONS (NOT PROVIDED IN MODEL ORDINANCE) AS FOLLOWS:
NBMC 5.04.060 Doing business with the city		B&O tax applies to any person who accepts or executes contracts with the city, subject to allocation and apportionment under NBMC 5.04.077
NBMC 5.04.090 Exemptions	Discretionary exemptions for: Non-profit organizations/corporations Healthcare International banking facilities Farmers/agriculture Athletic exhibitions Racing Ridesharing	
NBMC 5.04.095 City activities and city sponsored events exempted		Exemption for city-sponsored business activities
NBMC 5.04.100 Deductions	Discretionary deductions for: Non-profit organizations/corporations Public entities Interest on loans Repairs and maintenance Precious metal or monetized bullion Boarding homes Broadcasting	
Model Provision .110	Discretionary provision regarding application of tax to city business activities	
NBMC 5.04.140 Confidentiality, privilege and disclosure		Tax information is confidential and privileged, subject to disclosure under RCW 82.32.330

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO BUSINESS AND OCCUPATION TAXES AND ESTABLISHING A NEW SQUARE FOOTAGE TAX; AMENDING NBMC SECTION 5.04.050; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35A.82.020 authorizes code cities to license businesses for the purpose of creating revenue; and

WHEREAS, the City of North Bend (“City”) has, since 1960, levied a business license tax (known as a business and occupation (B&O) tax) on persons engaging in business within the City, to fund, among other things, the costs of governmental services needed by such businesses; and

WHEREAS, some businesses operate warehouses, distribution centers, self-storage facilities, and/or light manufacturing and research uses within North Bend that require governmental services and that create general City service and transportation infrastructure impacts, but which are largely exempt from existing B&O taxes; and

WHEREAS, other Washington cities utilize different forms and combinations of B&O taxes, including a business tax based upon square footage of space used for primarily non-retail activities and services and support activities; and

WHEREAS, the City Council of the City of North Bend has determined that it is in the public interest to impose a similar tax on the square footage of warehouse/distribution, self-storage facilities, and/or light manufacturing and research space (“the square footage tax”); and

WHEREAS, the new square footage tax is intended to generate additional revenue to support City services and maintain, repair and operate the City’s existing transportation network in order to fairly allocate the cost to provide those services and to maintain that infrastructure to those business entities that contribute most to the use and degradation of City streets; and

WHEREAS, the City desires to tier the new square footage tax in order to allocate the obligation upon such businesses without overburdening owners and operators of large-scale spaces; and

WHEREAS, the City finds that vacant buildings contribute less to the use and degradation of City streets and therefore desires to exempt such buildings from the new square footage tax for up to two years of continued vacancy; and

WHEREAS, the City’s right to impose B&O taxes, including the square footage tax, is a permissible form of business licensing for revenue purposes and therefore is not a tax on property subject to the uniformity requirement in Article VII, Section 1 of the Washington state constitution (*Tacoma v. Fiberchem, Inc.*, 44 Wn.App 538 (1986)); and

WHEREAS, in 2003, the Legislature enacted Chapter 35.102 RCW, which required cities with local B&O taxes to implement a modified B&O tax model ordinance with certain mandatory provisions, and also permits cities to adopt their own provisions for tax exemptions, credits, and deductions; and

WHEREAS, on August, 5, 2003, the City adopted Ordinance No. 1192 adopting a modified B&O tax model ordinance as required by state law; and

WHEREAS, RCW 35.102.040(4) requires that cities deviating from the nonmandatory provisions of the model B&O tax ordinance make available to the public a description of such differences; and

WHEREAS, RCW 35.21.706 requires that ordinances imposing a new B&O tax shall be subject to specific referendum procedures described therein;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC 5.04.050 (Imposition of the tax – Tax or fee levied), Amended. North Bend Municipal Code Section 5.04.050 (Imposition of the tax – Tax or fee levied) is hereby amended to read as follows:

5.04.050 Imposition of the tax – Tax or fee levied.

A. Gross Receipts Tax. Except as provided in subsection C 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 "gross receipts tax"). The gross receipts 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 byproducts, as the case may be, as follows:

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

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 byproducts, manufactured within the city, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

3. Upon every person engaging within the city in the business of making sales at wholesale, 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 two-tenths of one percent.

4. Upon every person engaging within the city in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) 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 two-tenths of one percent.

5. Upon every person engaging within the city in the business of making sales at retail, 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 two-tenths of one percent.

6. Upon every person engaging within the city in the business of sales of retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of two-tenths of one percent.

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, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent. 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.

B. Square Footage Tax. Except as provided in subsection C of this section, there is hereby levied upon and shall be collected from every person who leases, own, occupies, or otherwise maintains a structure within the city for purposes of engaging in business within the city, a tax for the act or privilege of engaging in business activities within the city (the "square footage tax"). The tax shall be in amounts to be determined by application of rates against square footage of warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space as follows:

1. Subject to the deductions established in subsection (B)(5) of this section, the amount of the tax due shall be equal to the sum of the number of square feet of floor area for each warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city multiplied by the rate(s) shown below per quarterly period for each calendar year:

a. The first 25,000 square feet shall be taxed at a rate of fifteen cents (\$0.15);

b. The second 25,000 square feet (25,001 thru 50,000 sq. ft.) shall be taxed at a rate of ten cents (\$0.10);

c. All square footage beyond 50,000 (50,001+ sq. ft.) shall be taxed at a rate of ~~five~~four cents (\$0.04).

2. For purposes of this section, the following terms shall have the meanings set forth below:

a. “Industrial” means suitable for the manufacturing, processing, assembling, packaging or fabricating of previously prepared materials; manufacturing and processing of products predominately from extracted or raw materials; wrecking; storage activities; research and development activities; and warehousing.

b. “Light manufacturing” means a light industrial business where all processing, fabricating, assembly or disassembly of items takes place wholly within an enclosed building.

c. “Research” means businesses associated with research and development activities, high technology, software engineering, biotechnology, electronic components and board systems engineering, development, and application, and similar business activities.

d. “Self-storage facility” means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence.

e. “Warehouse/Distribution” means a building or structure, or any part thereof, in which goods, wares, merchandise, commodities or equipment are stored, whether or not for compensation, for eventual distribution and/or furtherance of engaging in business.

3. For purposes of this section, the square footage shall be calculated to the nearest square foot and shall be computed by measuring all floor space, including mezzanines and lofts, to the inside finish of permanent outer building walls and shall include space used by columns and projections.

4. For any person with more than one location within the city, the floor space for all locations within the city shall be combined. When a person rents space to another person, the person occupying the rental space is responsible for the square footage tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

5. If, in any quarterly period, a person is subject to both the square footage tax imposed by this subsection (B) and the gross receipts tax imposed by subsection (A) of this section, then the amount of square footage tax due for the quarterly period shall be equal to only the portion of the square footage tax that exceeds the amount of the gross receipts tax due for the same quarterly period.

C. Exemption(s) and Threshold(s).

1. Gross receipts exemption. The gross receipts tax imposed in subsection (A) of this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, from all activities conducted within the city during

any calendar year are equal to or less than \$20,000, or are equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

2. Square footage exemption. The square footage tax imposed in subsection (B) of this section shall not apply to any warehouse, distribution facility, self-storage facility, industrial, and/or light manufacturing or research space leased, owned, occupied, or otherwise maintained within the city which is vacant during the entire quarterly reporting period in which the tax would otherwise be due; provided, that the taxpayer must claim the exemption by filing a certificate of vacancy during each quarterly period that the space remains vacant, and provided further that no person may claim this exemption for more than eight (8) consecutive quarterly periods.

3. Square footage threshold.

a. The square footage tax imposed in subsection (B) of this section shall not apply to any person whose total floor area of business space within the city is less than ten thousand (10,000) square feet of warehouse/distribution, industrial, and/or light manufacturing or research space; provided, however, that the threshold established in this subsection (C)(3) does not apply to self-storage facilities, and all square footage of self-storage facilities is subject to the square footage tax.

b. This is a threshold and not an exemption. If the square footage tax applies, it applies to all such business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.

D. Rules. The director may promulgate rules and regulations regarding the manner, means, and method for calculating any tax imposed under this section.

Section 2. Deviation from Model B&O Tax Ordinance. Pursuant to RCW 35.102.040(4), the City shall make a description available to the public, both in written and electronic form, of the City's deviations from the nonmandatory provisions of the model B&O tax ordinance in a form substantially similar to Exhibit A, *North Bend B&O Tax Code's Deviations from Core Model Ordinance*, which is attached hereto and incorporated by this reference.

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Pursuant to RCW 35.21.706, the referendum procedure described herein shall be exclusive and shall supersede the procedures provided under Chapters 35.17 and 35A.11 RCW and all other statutory provisions for initiative or referendum which might otherwise apply.

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5.04.050(A)(7)	All Others	gross income x .002
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5.04.050(B)(1)(c)	Square Footage – all square footage beyond 50,000 (50,001+ sq. ft.)	\$0.0504/sq. ft. quarterly
5.04.060	Doing Business with the City	gross price x .002

NOTE: Refer to NBMC Chapter 5.04 for allowable credits, exemptions, thresholds and deductions

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such

decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3rd DAY OF MAY, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:

Effective:

Susie Oppedal, City Clerk

**EXHIBIT A:
North Bend B&O Tax Code's Deviations from Core Model Ordinance**

CITATION TO B&O TAX CODE PROVISION	SUMMARY OF CHANGE FROM MODEL B&O TAX ORDINANCE	
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NBMC 5.04.015 Business license required		Every person who engages in business activities within the City shall obtain a business license.
NBMC 5.04.030 Definitions	Discretionary definitions for: Advance, reimbursement Agricultural product; farmer Artistic or cultural organization Competitive telephone service Consumer In this City; within this City Newspaper; magazine; periodical Non-profit corporation or non-profit organization Office; place of business Precious metal bullion or monetized bullion Processing for hire Product; byproduct Royalties Software; prewritten software; custom software; customization of canned software; master copies; retained rights Tuition fee	
Model Provision .040	Discretionary provision regarding sales and service by agents	
NBMC 5.04.050(A) Gross receipts tax		Tax rates for the following classifications: Extractor: .2% (.002) Manufacturer: .2% (.002) Wholesale: .2% (.002) Printing and Publishing: .2% (.002) Retail: .2% (.002) Retail Services: .2% (.002) Other: .2% (.002)
NBMC 5.04.050(B) Square footage tax		Quarterly square footage tax rate for warehouse/distribution, self-storage facilities, industrial, and/or light manufacturing and research space: \$0.15/sq. ft. for first 25,000 sq. ft. \$0.10/sq. ft. for second 25,000 sq. ft. \$0.0504/sq. ft. for all square footage above 50,000 sq. ft.
NBMC 5.04.050(C) Gross receipts exemption / Square footage threshold		Square footage tax only applies to spaces 10,000 square feet or greater; provided that this threshold does not apply to self-storage facilities space (all self-storage facilities space is subject to square footage tax)

CITATION TO B&O TAX CODE PROVISION	SUMMARY OF CHANGE FROM MODEL B&O TAX ORDINANCE	
	CITY CODE OMITTS THE FOLLOWING DISCRETIONARY PROVISIONS PROVIDED IN MODEL ORDINANCE:	CITY CODE INCLUDES ADDITIONAL PROVISIONS (NOT PROVIDED IN MODEL ORDINANCE) AS FOLLOWS:
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NBMC 5.04.090 Exemptions	Discretionary exemptions for: Non-profit organizations/corporations Healthcare International banking facilities Farmers/agriculture Athletic exhibitions Racing Ridesharing	
NBMC 5.04.095 City activities and city sponsored events exempted		Exemption for city-sponsored business activities
NBMC 5.04.100 Deductions	Discretionary deductions for: Non-profit organizations/corporations Public entities Interest on loans Repairs and maintenance Precious metal or monetized bullion Boarding homes Broadcasting	
Model Provision .110	Discretionary provision regarding application of tax to city business activities	
NBMC 5.04.140 Confidentiality, privilege and disclosure		Tax information is confidential and privileged, subject to disclosure under RCW 82.32.330



City Council Agenda Bill

SUBJECT:		Agenda Date: May 3, 2016		AB16-051		
Ordinance Establishing a Commercial Parking Tax and Adopting a New Chapter 3.26 of the North Bend Municipal Code		Department/Committee/Individual				
		Mayor Ken Hearing				
		City Administrator – Londi Lindell				X
		City Attorney - Mike Kenyon				
		City Clerk – Susie Oppedal				
		Community & Economic Development – Gina Estep				
		Finance Director – Dawn Masko				X
		Public Works Director – Mark Rigos				
Cost Impact: N/A						
Fund Source:						
Timeline:						
Attachments: Ordinance						
SUMMARY STATEMENT:						
<p>Chapter 82.80 RCW allows cities to impose a tax on commercial parking transactions. This tax may either be on the commercial parking business, based on either gross proceeds or by a fixed fee per stall, or on the customer (similar to an admissions tax). The parking business operator is responsible for collecting the tax and remitting it to the city.</p> <p>The proposed ordinance adds a new Chapter 3.26 to the North Bend Municipal Code entitled Commercial Parking Tax and imposes a 30% tax on a quarterly basis to the gross proceeds of a commercial parking business. In compliance with the provisions of RCW 82.80.070 the proceeds of the tax shall be used strictly for transportation purposes.</p> <p>The City desires to establish a commercial parking tax to generate additional revenue to maintain, repair, expand, construct and operate the City’s transportation network. The commercial truck travel center located within city boundaries brings a significant amount of truck traffic through the City of North Bend, resulting in numerous adverse impacts on City streets and infrastructure. The additional revenue generated from the adoption of a commercial parking tax would help mitigate the service impacts created by this activity on traffic and transportation infrastructure. This tax will apply to any other paid parking lots that may operate in the City in the future.</p> <p>It is difficult to determine precisely how much revenue this commercial parking tax would generate. The amount generated is dependent on how many paid parking stalls are used per day and the parking rate being assessed by the parking business operator. Regardless of the amount generated, while it will help address the transportation infrastructure issue, it will still not generate enough proceeds to fully fund the City pavement management and street maintenance budgets.</p>						
COMMITTEE REVIEW AND RECOMMENDATION: The Finance & Administration Committee reviewed this item at their April 5, 2016 meeting and recommended approval on the consent agenda.						
RECOMMENDED ACTION: MOTION to approve AB16-051, an ordinance adopting North Bend Municipal Code 3.26 Commercial Parking Tax, as a first and final reading.						
RECORD OF COUNCIL ACTION						
<i>Meeting Date</i>		<i>Action</i>		<i>Vote</i>		
May 3, 2016						

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, ESTABLISHING A COMMERCIAL PARKING TAX AND ADOPTING A NEW CHAPTER 3.26 OF THE NORTH BEND MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Article VII, Section 1 of the Washington State Constitution authorizes cities to impose taxes to raise money for the public treasury wherever statutory or constitutional authority exists to impose a particular tax (*Okeson v. City of Seattle*, 150 Wn.2d 540, 551 (2003)); and

WHEREAS, RCW 82.80.030 permits cities to impose a parking tax on all persons engaged in a commercial parking business within city limits; and

WHEREAS, the North Bend Municipal Code permits the continued operation of a commercial truck travel center located in the East North Bend Master Plan Overlay District, which operates a commercial parking business; and

WHEREAS, the commercial truck travel center brings a significant amount of truck traffic through the City of North Bend, resulting in numerous adverse impacts on City streets and infrastructure; and

WHEREAS, the future addition of any other paid parking lot within the City would also impact traffic and transportation infrastructure; and

WHEREAS, the City Council desires to establish a commercial parking tax to generate additional revenue to maintain, repair, expand, construct and operate the City’s existing transportation network;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. New Chapter 3.26 NBMC (Commercial Parking Tax), Adopted: A new North Bend Municipal Code Chapter 3.26 (Commercial Parking Tax) is hereby adopted to read as follows:

**Chapter 3.26
COMMERCIAL PARKING TAX**

Sections:
3.26.010 Definitions.

- 3.26.020 Tax rate – Who must pay.
- 3.26.030 Payment of tax.
- 3.26.040 Tax – Collection.
- 3.26.050 Over- or underpayment of tax.
- 3.26.060 Penalty for late payment.
- 3.26.070 Violation – Penalty.
- 3.26.080 Appeal procedure.
- 3.26.090 Confidentiality of tax returns.
- 3.26.100 Duties of the director.
- 3.26.110 Use of proceeds of tax.

3.26.010 Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

- A. “Commercial parking business” means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged.
- B. “Commercial parking lot” means a covered or uncovered area with stalls for the purpose of parking motor vehicles.
- C. “Director” means the finance director of the city of North Bend or his or her designee.
- D. “Gross proceeds” means and includes the gross receipts collected or accruing by reason of the transaction of the commercial parking business, without any deduction on account of the cost of tangible property sold, labor costs, interest, discount, taxes, or any other costs or expenses whatsoever paid or accrued and without any deduction on account of losses.
- E. “Person” means any individual, association, corporation, partnership, joint venture, trust, or other entity.

3.26.020 Tax rate – Who must pay.

There is levied upon and shall be collected from every person engaged in a commercial parking business within the city a commercial parking tax in an amount equal to 30 percent of the gross proceeds of the commercial parking business.

3.26.030 Payment of tax.

A. The tax imposed by this chapter shall be due and payable in quarterly installments, on or before the last day of the month immediately following the end of the quarterly period

in which the tax accrued. The quarterly periods are as follows:

1. First quarter: January, February, March.
2. Second quarter: April, May, June.
3. Third quarter: July, August, September.
4. Fourth quarter: October, November, December.

B. The director may require payment of the tax to be accompanied by a written tax return, upon such form and setting forth such information as the director or designee, may reasonably require in order to calculate the amount of tax due to the city.

C. The director shall have the right to require proof of the gross proceeds of the commercial parking business. Each person required to pay the tax imposed by this chapter shall retain records reflecting the gross proceeds of the commercial parking business and the records shall be open at all reasonable hours to inspection by the director.

D. If the payment of any tax due under this chapter is not received by the city by the last day of the month in which the tax becomes due, the tax shall be delinquent.

3.26.040 Tax – Collection.

The tax imposed by this chapter, and all penalties thereon, shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt, which remedy shall be in addition to all other existing remedies. The city shall be entitled to an award of all court and collection costs, including attorneys' fees. Amounts delinquent more than 90 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due.

3.26.050 Over- or underpayment of tax.

In the event that a person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or a credit of the same, the person's claim shall

be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to penalty.

3.26.060 Penalty for late payment.

A. If payment of any tax due under this chapter is not received by the city by the last day of the month in which the tax was due, there shall be added to such tax a penalty as follows:

- 1. One to 30 days past-due: 10 percent of tax due, minimum penalty of \$25.00;
- 2. Thirty-one to 60 days past-due: 15 percent of tax due, minimum penalty of \$50.00;
- 3. Sixty-one days or more past-due: 20 percent of tax due, minimum penalty of \$75.00.

B. The director shall notify the taxpayer by mail of the amount of any penalties so added or assessed, and the same shall become due and shall be paid within 10 days from the date of such notice.

3.26.070 Violation – Penalty.

A. It shall be a violation of this chapter:

- 1. For a person required to pay a tax under this chapter to fail or refuse to pay the tax imposed;
- 2. For a person to evade payment of the tax, or any part thereof;
- 3. For a person to fail to appear and/or refuse to testify in response to a subpoena issued in any proceeding under this chapter;
- 4. For a person to testify falsely upon any investigation into the correctness of a return, or upon the hearing of any appeal; or

5. For a person to in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

B. Any violation of this chapter constitutes a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment. Any such fine shall be in addition to the taxes and penalties due. Officers, directors and managers of any commercial parking business shall be jointly and severally liable for the payment of the tax and for the payment of any fine imposed under this section.

3.26.080 Appeal procedure.

A. Administrative appeal. Any person, except one who has failed to comply with NBMC 3.26.030(C), aggrieved by the amount of the 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 hearing examiner within 30 days from the date written notice of such amount was mailed to the taxpayer. The hearing examiner 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 hearing shall be conducted in accord with the provisions of Chapter 2.20 NBMC. The decision of the hearing examiner shall indicate the correct amount of the tax owing.

B. Judicial review of administrative appeal decision. The taxpayer or the city may obtain judicial review of the hearing examiner's administrative decision by applying for a writ of review in King County Superior Court within 30 days from the date of the hearing examiner's 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.

3.26.090 Confidentiality of tax returns.

The tax returns made to the city pursuant to this chapter shall not be made public, nor shall they be subject to inspection by a person who is not an employee of or under contract to the city and who is not acting in an official capacity. It shall be unlawful for any person to make public or to inform any

unauthorized person as to the contents of a tax return, or to permit inspection of a tax return, except as authorized in this section or as required by law. This section shall not be construed to prohibit the disclosure of information received under this chapter to the Federal Internal Revenue Service, State Department of Revenue, or to tax enforcement officials of any other city in the state of Washington for official purposes only, and this section shall not be construed to prohibit or make unlawful the disclosure of the name and address of any person licensed under this chapter, or of any person signing an application on behalf of an applicant.

3.26.100 Duties of the director.

A. The director shall keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any tax or penalty collected under the provisions of this chapter, the director shall deposit the amounts collected into the street fund of the city.

B. In order to carry out the provisions of this chapter, the director shall have the power to adopt, publish and enforce rules and regulations consistent with this chapter.

C. The director for good cause shown may extend the time for making and filing any tax return required under this chapter; provided, that any extension in excess of 30 days shall be conditioned upon payment of interest of one percent on the amount of tax for each 30 days or portion thereof from the date upon which the tax became due.

3.26.110 Use of proceeds of tax.

The proceeds of the tax imposed and collected pursuant to this chapter shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

Section 2. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF
MAY, 2016.**

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk



Office of Mayor

PROCLAMATION

- WHEREAS,** our City's continuing efforts to address the critical issues of safety, energy efficiency, water conservation, and resilience in the built environment that affect our citizens, in everyday life and in times of natural disaster, give us confidence that our structures are safe and sound; and
- WHEREAS,** our confidence is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, and others in the construction industry—who work year-round to ensure the safe construction of buildings; and
- WHEREAS,** Building Safety Month is sponsored by the International Code Council, to remind the public about the critical role of our communities' largely unknown guardians of public safety—our local code officials—who assure us of safe, efficient and livable buildings; and
- WHEREAS,** “Building Codes: Driving Growth through Innovation, Resilience and Safety” the theme for Building Safety Month 2016, encourages all Americans to raise awareness of the importance of building safe and resilient construction; fire prevention; disaster mitigation, water safety and conservation; energy efficiency and new technologies in the construction industry; and
- WHEREAS,** Building Safety Month encourages appropriate steps everyone can take to ensure that the places where we live, learn, work, worship and play are safe and sustainable, and recognizes that countless lives have been saved due to the implementation of safety codes by local and state agencies; and

NOW, THEREFORE, I, Ken Hearing, Mayor, do hereby proclaim the month of May 2016, as

BUILDING SAFETY MONTH

in North Bend and encourage our citizens to join with communities in participation in Building Safety Month activities.

Signed this 3rd day of May, 2016



Kenneth G. Hearing
Mayor



City Council Agenda Bill

SUBJECT:		Agenda Date: May 3, 2016		AB16-052		
An Ordinance Amending North Bend Municipal Code Chapter 19.06, and Repealing Chapters 12.08 and 19.07, Concerning Franchise Utilities and Street Lighting		Department/Committee/Individual				
		Mayor Ken Hearing				
		City Administrator – Londi Lindell				
		City Attorney - Mike Kenyon				
		City Clerk – Susie Oppedal				
		Community & Economic Development – Gina Estep				
		Finance – Dawn Masko				
		Public Works – Mark Rigos				
		CED Senior Planner – Mike McCarty				X
		Cost Impact: N/A				
Fund Source: N/A						
Timeline: Immediate						
Attachments: Ordinance, Exhibit A - Code Amendments, Exhibit B - Planning Commission Recommendation						
SUMMARY STATEMENT: <p>Together with the preparation of the City’s Public Works Standards, staff reviewed and updated the development regulations addressing franchise utilities and street lighting. These related facilities are currently addressed in three different municipal code chapters, NBMC 12.08 Overhead Utility Lines, 19.06 Design and Construction Standards for Electrical and Street Lighting, and 19.07 Design and Construction Standards for Underground Cable Television Conduits.</p> <p>To simplify the code and eliminate overlapping and conflicting language, the amendments repeal Chapters 12.08 and 19.07 in their entirety, and update Chapter 19.06 to contain all regulations addressing these facilities. The amendments also provide better clarification on when undergrounding existing overhead utilities is required, when installing street lighting is required, certain design criteria for new transmission lines, and certain design criteria for new street lighting.</p> <p>The Planning Commission reviewed the amendments at their March 10, March 24, and April 14, 2016 meetings, held a public hearing on March 24, 2016, and provided a recommendation of approval on April 14, 2016.</p>						
COMMITTEE REVIEW AND RECOMMENDATION: The Community and Economic Development Committee reviewed the proposed amendments at their April 19 th meeting and recommended approval.						
RECOMMENDED ACTION: MOTION to approve AB16-052, an ordinance amending NBMC Chapter 19.06, and repealing Chapters 12.08 and 19.07 concerning Franchise Utilities and Street Lighting, as a first and final reading.						
RECORD OF COUNCIL ACTION						
<i>Meeting Date</i>		<i>Action</i>		<i>Vote</i>		
May 3, 2016						

ORDINANCE

**AN ORDINANCE OF THE CITY OF NORTH BEND,
WASHINGTON, ADOPTING AMENDMENTS TO
NORTH BEND MUNICIPAL CODE CHAPTER 19.06 AND
REPEALING NORTH BEND MUNICIPAL CODE
CHAPTERS 12.08 AND 19.07, CONCERNING
FRANCHISE UTILITIES AND STREET LIGHTING;
PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of North Bend provides regulations pertaining to franchise utilities, including natural gas, electrical power, communications, cable television, and street lighting in three separate chapters of the North Bend Municipal Code, including Chapter 12.08 Overhead Utility Lines, Chapter 19.06 Design and Construction Standards for Electrical and Street Lighting, and Chapter 19.07 Design and Construction Standards for Underground Cable Television Conduits; and

WHEREAS, to simplify administration of these similar regulations, avoid overlap, and eliminate conflicting language between these chapters, the City wishes to consolidate these regulations into an amended chapter of the North Bend Municipal Code – Chapter 19.06 Franchise Utilities and Street Lighting, hereafter referred to as “the Amendments,” and repeal existing Chapters 12.08 and 19.07; and

WHEREAS, the City additionally wishes to provide updates in the Amendments to better clarify when undergrounding of existing overhead utilities is required, clarify when street lighting is required, and provide certain design criteria for electrical transmission lines and street lights; and

WHEREAS, the City issued a State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) and Notice of Public Hearing for the Amendments on March 9, 2016; and

WHEREAS, the City submitted the Amendments to the Washington State Department of Commerce for review as required per RCW 36.70A.106 on March 7, 2016; and

WHEREAS, the Planning Commission reviewed the Amendments at their March 10, March 24, and April 14, 2016 meetings, and held a public hearing on the amendments on March 24, 2016, receiving and considering comments; and

WHEREAS, pursuant to the procedures established in NBMC 20.08, notice of the public hearing and SEPA DNS was provided by publication of a legal notice in the Snoqualmie Valley Record, posting at the City's four official posting locations, and posting of the hearing, SEPA DNS, and proposed amendment language on the City's website and updated frequently; and

WHEREAS, the Planning Commission, on March 24, 2016, recommended approval of the Amendments, as described in the Planning Commission Findings Conclusions and Recommendations staff report dated April 15, 2016, attached as Exhibit B, which includes the written comment received; and

WHEREAS, the Council finds that the proposed Amendments address and are consistent with the requirements of the Growth Management Act; and

WHEREAS, the Council finds that the City followed procedural requirements of NBMC Chapter 20.08 to notify and advertise amendments of the Code to the public and interested agencies and pursuant to this, the Planning Commission and subsequently the City Council considered all written and verbal comments received during their respective processes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the amendments to Chapter 19.06 Design and Construction Standards for Electrical and Street Lighting, of the North Bend Municipal Code, and renames it Franchise Utilities and Street Lighting, as attached hereto as Exhibit A.

Section 2. The City Council repeals Chapter 12.08 Overhead Utility Lines, and Chapter 19.07 Design and Construction Standards for Underground Cable Television Conduit, of the North Bend Municipal Code, in their entirety.

Section 3. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date: This ordinance shall be published in the official newspaper

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of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF MAY, 2016.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

Published:
Effective:

ATTEST/AUTHENTICATED:

Susie Oppedal, City Clerk

EXHIBIT A

The existing North Bend Municipal Code Chapter 19.06 Design and Construction Standards for Electrical and Street Lighting shall be replaced with the following:

**NBMC Chapter 19.06
FRANCHISE UTILITIES AND STREET LIGHTING**

Sections:

- 19.06.010 Application of Chapter
- 19.06.020 Purpose
- 19.06.030 Public Works Standards
- 19.06.040 Definitions
- 19.06.050 New Utilities
- 19.06.060 Undergrounding of Existing Overhead Utilities
- 19.06.070 Placement of Underground Cable Television Conduits
- 19.06.080 Overhead Electrical Transmission Facilities
- 19.06.090 Liability for Costs
- 19.06.100 Installation – City Engineer Approval
- 19.06.110 Street lighting
- 19.06.120 Existing City Franchises Not Affected

19.06.010 Application of Chapter

The provisions of this chapter shall apply to all new and existing franchise utility systems including, but not limited to, electrical (including street lighting), gas, communications, and all other franchise utilities, except for Major Utility Facilities as defined and regulated under NBMC Title 18.

19.06.020 Purpose

The purpose of this chapter is to establish minimum requirements for the underground installation and relocation of franchise utilities within the City. It is further the policy of the City to require the underground installation of all new franchise utilities, and the relocation of existing franchise utilities underground when affected by new development or redevelopment under the provisions of this chapter. The City finds that the health, safety, and general welfare of the residents of the community require that all new and relocated facilities specified in this chapter be installed underground.

19.06.030 Public Works Standards

This chapter provides minimum requirements for franchise utilities and street lighting. Detailed standards and technical specifications pertaining to construction and installation of these facilities are found in the City’s Public Works Standards.

19.06.040 Definitions

Unless otherwise specified below, definitions shall be as provided under NBMC Title 18, Zoning.

- A. *Electrical distribution facilities* include those electrical utility lines and equipment operating between 120 and 35,000 volts that provide direct service to customers.
- B. *Electrical transmission facilities* include those electrical utility lines and equipment operating above 35,000 volts transmitting power from generating stations to substations.
- C. *New development or redevelopment* for purposes of this section includes any one of the following conditions;
 - 1. A land use or building permit for a new building or land use where frontage improvements are required; or

EXHIBIT A

2. A building permit for a project where the cost of construction equals or exceeds 50 percent of the assessed value of the existing structure on site, excluding interior remodel of existing single family residential structures and auxiliary buildings.

19.06.050 New Utilities

All new franchise utility facilities installed for new development or redevelopment shall be placed underground, with the following exceptions:

- A. Electrical transmission facilities.
- B. Wireless Communication Facilities (see applicable code section).
- C. Accessory franchise utility facilities less than 36 inches in height such as meters, junction boxes, transformers, and the like, when placed at least 5 feet from the edge of sidewalk, pavement edge or back of ditch and screened with landscaping compliant with franchise utility standards.
- D. Accessory franchise utility facilities greater than 36 inches in height, when located within a building or placed in a non-prominent location on the side or rear of the building or at least 10 feet from the right of way or other public areas, and located behind a minimum of five feet of Type 1 landscaping pursuant to Chapter 18.18 NBMC and franchise utility standards.

19.06.060 Undergrounding of Existing Overhead Utilities

A. Undergrounding with New Development or Redevelopment.

Existing aboveground wiring and related equipment for electrical distribution facilities, communication facilities, and other purposes, except for wireless communication facilities, transformers, junction boxes and the like, shall be relocated underground along the property frontage when the development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, except when the right-of-way frontage of the new development or redevelopment is less than 150 feet in width along the frontage containing the aboveground wiring, and

- 1. the new development or redevelopment does not require relocation of the existing aboveground wiring to accommodate the required site or street frontage improvements; or
- 2. the city engineer determines that the undergrounding of the portion of the existing aboveground wiring along the development or redevelopment’s street frontage would require undergrounding portions of the existing aboveground wiring beyond the development’s street frontage, unless such additional undergrounding is no more than 50 feet beyond the property line on either end of the street frontage to connect to logical points of the existing utility system.

B. Where undergrounding is not required for a new development or redevelopment under one of the exemptions listed in Subsection A above, and street frontage improvements are required, the applicant shall provide conduit within the street frontage improvements for the future undergrounding of the above ground wiring. The conduit shall be of sufficient size and dimension to accommodate the projected maximum line size required for all franchise utility facilities to be undergrounded.

C. Undergrounding with Publicly-Funded Street Improvements.

As major publicly-funded street improvements are undertaken within the City and where such programs require electrical, telephone or TV cable distribution facilities relocation, such facilities shall be relocated underground, unless exempted by action of the City Council.

D. Relocation Time Limit.

As overhead franchise utility facilities are relocated underground, the applicant shall have all overhead connections undergrounded and shall connect to the new underground facilities within 90 days of the date of undergrounding completion. A franchise utility provider’s compliance with this 90-day time limit is

EXHIBIT A

excused if unforeseen events or circumstances beyond the reasonable control of the franchisee, including acts of God, render timely performance impossible, infeasible, or impracticable, or if despite the franchisee’s best efforts, performance cannot be timely without posing risks to public safety and service requirements.

19.06.070 Placement of Underground Cable Television Conduits

When an applicant and/or landowner extends basic utilities to serve a building site, cable television conduits shall be laid underground at the same time as those other basic utilities. This will include only the conduits needed for street crossings and for mainline distributions of cable television to each building site throughout any proposed development. All conduit ends shall be brought to each building site property line, elbowed to the final ground elevation and capped. If the proposed development site is for multiple-family occupancy, then the conduit shall be so laid and be of sufficient dimension to ensure that cable television service may be connected to each of the proposed living units.

19.06.080 Overhead Electrical Transmission Facilities

Franchise Utility Providers proposing new or replaced overhead electrical transmission facilities shall utilize appropriate measures to mitigate the visual appearance of such facilities on surrounding landscapes and views. Measures shall be determined based on the context of the facility and in consultation with the City, and should address pole height, pole spacing, materials and color as necessary to blend with surroundings, and co-location with other facilities to the extent possible.

19.06.090 Liability for costs

The applicant and/or landowner shall pay the costs required for the franchise utility provider to install or underground the utilities, including removal of the existing overhead facilities if required, and install conduit to each individual property line, including conduit, trenching and easements; provided, the costs of extending the utilities and conduit across the frontage of the build-site or development to the next property line shall be eligible for latecomer’s agreement.

19.06.100 Installation – City engineer approval

Design and installation of new and relocated utilities shall be done by the franchise utility company. All work shall be installed in accordance with industry standards for the associated utility and shall be subject to the approval of the city engineer. The applicant and/or landowner shall provide necessary occupancy rights and easements for the pad-mounted transformers and other accessory facilities necessary for the furnishing of such utilities.

19.06.110 Street lighting

A. When required.

When a development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, the applicant shall provide street lighting within existing and new public rights-of-way in accordance with these standards, if existing street lighting is not already provided.

B. Ownership.

- 1. Public street lights. Street lights within public rights-of-way shall be owned by the City or Franchise Utility Provider, or as otherwise determined through utility franchise agreements.

EXHIBIT A

2. Private street lights. Street lights on or along private alleys, roads or streets, on private property, or not otherwise within a public right-of-way, shall be privately owned and operated.

C. Billing to franchise utility providers for energy use for all street lights internal to new residential subdivisions shall be paid for by the homeowners association of the subdivision. All street lights along all other public streets shall be paid for by the City.

D. Energy conservation lighting fixtures.

All new street lighting shall utilize LED fixtures, or other equivalent best available technology that provides sufficient lumen output while reducing energy consumption, except where necessary to match existing lighting fixtures in an infill situation. To provide warmer lighting tones that reduce glare and night-sky pollution, fixtures shall provide a correlated light color temperature not to exceed 3,000 Kelvin.

E. Minimum lighting requirements.

Street lighting shall be provided at all intersections within and abutting the development, at the end of dead-end streets containing more than three homes, at the apex of sharp curves, and in any additional areas where determined necessary for safety by the Public Works Director, such as crosswalks. Street lighting shall utilize full cut-off fixtures to minimize glare. The street lighting shall be designed to provide a minimum light intensity at intersections as specified in the table below, or greater when determined necessary for safety by the Public Works Director. Detailed construction and facility street lighting specifications, including specified pole and fixture design in certain areas, are provided in the Public Works Standards.

Street Classification	Average Lighting Foot-Candles in areas where lighting is required
Arterial	0.6
Collector	0.4
LocalAccess/Half-Street	0.4

19.06.120 Existing City franchises not affected.

This chapter shall not affect or waive any right or obligation of a City franchise for use of the City right-of-way, and shall be applied consistent with any applicable tariffs and regulations of the Washington Utilities and Transportation Commission. If a provision of this chapter conflicts with a provision of a franchise agreement or ordinance, the provision of the franchise agreement or ordinance shall control.



**Community and Economic Development Department Staff Report and Planning
Commission Recommendation for Municipal Code Amendments**

Subject: Amendments to North Bend Municipal Code Chapters 12.08,
19.06 and 19.07 Concerning Franchise Utilities and Street
Lighting

Date: April 15, 2016

Summary of proposed amendments:

The North Bend Municipal Code currently has regulations addressing Franchise Utilities (natural gas, power, street lighting, communications, and cable) in three separate chapters of the code, including Chapter 12.08 *Overhead Utility Lines*, Chapter 19.06, *Design and Construction Standards for Electrical and Street Lighting*, and Chapter 19.07 *Design and Construction Standards for Underground Cable Television Conduits*.

Having these similar regulations for the various franchise utilities in different sections of the code creates complexity and potential confusion. Consolidating these chapters into one new municipal code Chapter 19.06 Franchise Utilities and Street Lighting will simplify implementation and avoid unnecessary overlap.

In particular, the thresholds for when undergrounding of existing overhead utilities is required has been consolidated and clarified, to eliminate conflicting language between chapters 12.08 and 19.06.

Likewise, standards have been established for when street lighting is required for projects, which the City's code has not previously specified.

The amendments also simplify the language of the regulations, delete provisions that are unnecessary or outdated, and refer to the City's Public Works Standards for the construction-related technical details and specifications rather than provide those within the development regulations themselves (technical detail examples include: how deep an underground line needs to be placed below the road grade, utility trenching backfill requirements, light bulb wattage, size of required connecting bolts, etc.)

The draft Chapter 19.06 is included as an attachment. Because of the level of amendments provided, track-changes redline format is not feasible (too messy). However, notations are provided indicating which existing provisions the draft sections come from (and as amended). Also attached for reference are the existing chapters 12.08, 19.06 and 19.07 should you wish to compare.

Edits following introduction at 3/10/16 Planning Commission Meeting:

Edits have been made to the draft amendments based on comments provided by the Planning Commission at their 3/10/16 meeting, comments from the CED Council Committee at their 3/15/16 meeting, comments from City staff review, and written comment from Puget Sound Energy and Century Link. Edits to the draft amendments that have been made since the time of the Planning Commission's 3/24/16 meeting are shown in redline/track changes format in the draft. A section was added concerning mitigating the visual presence of electrical transmission lines, and lighting color-temperature has been addressed in the lighting standards per the Planning Commission's request. Of note, the International Dark Sky Association suggests a lower temperature value than does Jeremy Michel from PSE. There are reasons for going both ways, and the Planning Commission considered this information at the 4/14/16 meeting. After a color temperature demonstration and discussion on temperature versus brightness, the Planning Commission adopted the color temperature of 3000k and Arterial brightness increase to .6 foot-candles to their recommendation. Please see further information in Exhibits E - G. The draft includes a maximum color temperature value of 3,000K.

FINDINGS:

SEPA: The proposed NBMC amendment is subject the State Environmental Policy Act (SEPA). A SEPA Determination of Non-Significance was issued on March 9, 2016. The SEPA Determination of Non-Significance and Checklist are on file with the City.

Transmittal to Commerce:

The draft amendments were transmitted to the Department of Commerce as required per RCW 36.70A.106 on March 7, 2016.

Public Hearing: A public hearing was held for the proposed amendments at the March 24, 2016 Planning Commission meeting. Comment received is referenced in the Public Comment section below and provided as exhibits to this staff report.

Municipal Code Amendments Process:

Municipal Code Amendments are governed by NBMC 20.08.070 through 20.08.110, evaluated in the staff report below.

Impacts of Proposed Amendments:

NBMC 20.08.070 requires that applications for municipal code amendments be evaluated for their environmental, economic and cultural impacts. No significant environmental, economic or cultural impacts are anticipated from the proposed amendments.

Compatibility of Proposed Amendment with North Bend Comprehensive Plan and Development Regulations:

In accordance with NBMC 20.08.070 and .080, applications for municipal code amendments must be evaluated for compliance with the Comprehensive Plan and Development Regulations.

The proposed amendments are specifically consistent with policies of the Utilities Element of the Comprehensive Plan, including the following:

- U-4.1: Work with the utilities to eliminate existing overhead power lines in the Urban Growth Area, with an emphasis on the downtown commercial zoning district.
- U-4.2: Develop regulations for siting and landscape requirements for utility meter cabinets, terminal boxes and similar above ground utility features.
- U-4.3: Where feasible, require installation of new power and communication lines to be placed underground.

The proposed amendments are also consistent with the Exterior Lighting Standards in NBMC 18.40, which apply to development sites (off street) and which likewise require full-cutoff lighting to minimize glare and light pollution.

Public Comment:

Written comment was received from Puget Sound Energy (Exhibits C and D), and from Century Link (Exhibit F). The City Attorney reviewed the City's draft NBMC 19.06 based on the written comments received from Puget Sound Energy and Century Link and suggested edits to the proposed NBMC 19.06 to address some of these comments, which staff have incorporated into the draft. In addition to the written comments, verbal comment was received from Jim Anderson from Tanner Electric at the March 24 Public Hearing, and is available on the recording for that meeting.

CONCLUSION AND STAFF RECOMMENDATION:

Based on the findings above, and in consideration of public comment received at the hearing, Staff recommends repealing North Bend Municipal Code Chapters 12.08 and 19.07 in their entirety, and replacement of North Bend Municipal Code 19.06 with that provided in Exhibit A.


Mike McCarty, Senior Planner

4/15/2016
Date

PLANNING COMMISSION RECOMMENDATION

Based on the findings above the North Bend Planning Commission recommends **APPROVAL/DENIAL** of the staff recommendation to repeal North Bend Municipal Code Chapters 12.08 and 19.07 in their entirety, and replacement of North Bend Municipal Code 19.06 with that provided in Exhibit A.


Planning Commission Chair

4/15/2016
Date

- Exhibit A: Proposed Municipal Code Amendments – NBMC 12.08, 19.06, and 19.07
- Exhibit B: Existing NBMC Chapters 12.08, 19.06 and 19.07 for reference
- Exhibit C: Letter from Eric Schwalb, Century Link
- Exhibit D: Email and redline edits to earlier draft from Rebecca Nicholas, PSE (PSE edits shown in blue)
- Exhibit E: Email from Jeremy Michel, Puget Sound Energy
- Exhibit F: Email from James Anderson, Tanner Electric
- Exhibit G: IDA Publication – The Promise and Challenges of LED Lighting, International Dark Sky Association.

PLANNING COMMISSION RECOMMENDATION
North Bend Municipal Code Amendments Chapters 12.08,
19.06 and 19.08

NBMC Chapter 12.08 Overhead Utility lines

NBMC Chapter 12.08 shall be repealed in its entirety. The contents of this chapter have been incorporated into the update to Chapter 19.06 as provided below.

NBMC Chapter 19.07 Design and Construction Standards for Underground Cable Television Conduits

NBMC Chapter 19.07 shall be repealed in its entirety. The contents of this chapter have been incorporated into the update to Chapter 19.06 as provided below.

NBMC 19.06 Design and Construction Standards for Electrical and Street Lighting

The existing NBMC Chapter 19.06 *Design and Construction Standards for Electrical and Street Lighting* shall be replaced with the following:

**NBMC Chapter 19.06
FRANCHISE UTILITIES AND STREET LIGHTING**

Sections:

- 19.06.010 Application of Chapter
- 19.06.020 Purpose
- 19.06.030 Public Works Standards
- 19.06.040 Definitions
- 19.06.050 New Utilities
- 19.06.060 Undergrounding of Existing Overhead Utilities
- 19.06.070 Placement of Underground Cable Television Conduits
- 19.06.080 Overhead Electrical Transmission Facilities
- 19.06.090 Liability for Costs.
- 19.06.100 Installation – City Engineer Approval.
- 19.06.110 Street lighting
- 19.06.120 Existing City Franchises Not Affected

19.06.010 Application of Chapter

The provisions of this chapter shall apply to all new and existing franchise utility systems including, but not limited to, electrical (including street lighting), gas, communications, and all other franchise utilities, except for Major Utility Facilities as defined and regulated under NBMC Title 18.

19.06.020 Purpose

The purpose of this chapter is to establish minimum requirements for the underground installation and relocation of franchise utilities within the City. It is further the policy of the City to require the underground installation of all new franchise utilities, and the relocation of existing franchise utilities underground when affected by new development or redevelopment under the provisions of this chapter.

PLANNING COMMISSION RECOMMENDATION
North Bend Municipal Code Amendments Chapters 12.08,
19.06 and 19.08

The City finds that the health, safety, and general welfare of the residents of the community require that all new and relocated facilities specified in this chapter be installed underground.

Comment [MM1]: Edits provided by City Attorney following review of comment by PSE and Century Link.

19.06.030 Public Works Standards

This chapter provides minimum requirements for franchise utilities and street lighting. Detailed standards and technical specifications pertaining to construction and installation of these facilities are found in the City's Public Works Standards.

19.06.040 Definitions

Unless otherwise specified below, definitions shall be as provided under NBMC Title 18, Zoning.

- A. *Electrical distribution facilities* include those electrical utility lines and equipment operating between 120 and 35,000 volts that provide direct service to customers.
- B. *Electrical transmission facilities* include those electrical utility lines and equipment operating above 35,000 volts transmitting power from generating stations to substations.
- C. *New development or redevelopment* for purposes of this section includes any one of the following conditions;
 - 1. A land use or building permit for a new building or land use where frontage improvements are required; or
 - 2. A building permit for a project where the cost of construction equals or exceeds 50 percent of the assessed value of the existing structure on site, excluding interior remodel of existing single family residential structures and auxiliary buildings.

19.06.050 New Utilities

All new franchise utility facilities installed for new development or redevelopment shall be placed underground, with the following exceptions:

- A. Electrical transmission facilities.
- B. Wireless Communication Facilities (see applicable code section).
- C. Accessory franchise utility facilities less than 36 inches in height such as meters, junction boxes, transformers, and the like, when placed at least 5 feet from the edge of sidewalk, pavement edge or back of ditch and screened with landscaping compliant with franchise utility standards.
- D. Accessory franchise utility facilities greater than 36 inches in height, when located within a building or placed in a non-prominent location on the side or rear of the building or at least 10 feet from the right of way or other public areas, and located behind a minimum of five feet of Type 1 landscaping pursuant to Chapter 18.18 NBMC and franchise utility standards.

Comment [MM2]: This edit per PSE Comment about access to facility difficult if too far from street.

19.06.060 Undergrounding of Existing Overhead Utilities

A. Undergrounding with New Development or Redevelopment.

Existing aboveground wiring and related equipment for electrical distribution facilities, communication facilities, and other purposes, except for wireless communication facilities, transformers, junction boxes and the like, shall be relocated underground along the property frontage when the development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, except when the right-of-way frontage of the new development or redevelopment is less than 150 feet in width along the frontage containing the aboveground wiring, and

- 1. the new development or redevelopment does not require relocation of the existing aboveground wiring to accommodate the required site or street frontage improvements; or
- 2. the city engineer determines that the undergrounding of the portion of the existing aboveground wiring along the development or redevelopment's street frontage would

PLANNING COMMISSION RECOMMENDATION
North Bend Municipal Code Amendments Chapters 12.08,
19.06 and 19.08

require undergrounding portions of the existing aboveground wiring beyond the development's street frontage, unless such additional undergrounding is no more than 50 feet beyond the property line on either end of the street frontage to connect to logical points of the existing utility system.

B. Where undergrounding is not required for a new development or redevelopment under one of the exemptions listed in Subsection A above, and street frontage improvements are required, the applicant shall provide conduit within the street frontage improvements for the future undergrounding of the above ground wiring. The conduit shall be of sufficient size and dimension to accommodate the projected maximum line size required for all franchise utility facilities to be undergrounded.

Comment [MM3]: This provision per Planning Commission recommendation.

C. Undergrounding with Publicly-Funded Street Improvements.

As major publicly-funded street improvements are undertaken within the City and where such programs require electrical, telephone or TV cable distribution facilities relocation, such facilities shall be relocated underground, unless exempted by action of the City Council.

Comment [MM4]: This is a combination of 12.08.006 and 12.08.010.

D. Relocation Time Limit.

As overhead franchise utility facilities are relocated underground, the applicant shall have all overhead connections undergrounded and shall connect to the new underground facilities within 90 days of the date of undergrounding completion. A franchise utility provider's compliance with this 90-day time limit is excused if unforeseen events or circumstances beyond the reasonable control of the franchisee, including acts of God, render timely performance impossible, infeasible, or impracticable, or if despite the franchisee's best efforts, performance cannot be timely without posing risks to public safety and service requirements.

Comment [MM5]: Replaces existing 12.08.040.

19.06.070 Placement of Underground Cable Television Conduits

When an applicant and/or landowner extends basic utilities to serve a building site, cable television conduits shall be laid underground at the same time as those other basic utilities. This will include only the conduits needed for street crossings and for mainline distributions of cable television to each building site throughout any proposed development. All conduit ends shall be brought to each building site property line, elbowed to the final ground elevation and capped. If the proposed development site is for multiple-family occupancy, then the conduit shall be so laid and be of sufficient dimension to ensure that cable television service may be connected to each of the proposed living units.

Comment [MM6]: This section added per City Attorney recommendation following review of PSE Comment.

Comment [MM7]: Existing 19.07.010

19.06.080 Overhead Electrical Transmission Facilities

Franchise Utility Providers proposing new or replaced overhead electrical transmission facilities shall utilize appropriate measures to mitigate the visual appearance of such facilities on surrounding landscapes and views. Measures shall be determined based on the context of the facility and in consultation with the City, and should address pole height, pole spacing, materials and color as necessary to blend with surroundings, and co-location with other facilities to the extent possible.

Comment [MM8]: This section added per Planning Commission request to address Transmission line aesthetics.

19.06.090 Liability for costs

The applicant and/or landowner shall pay the costs required for the franchise utility provider to install or underground the utilities, including removal of the existing overhead facilities if required, and install conduit to each individual property line, including conduit, trenching and easements; provided, the costs

Comment [MM9]: Amends existing 19.07.020

PLANNING COMMISSION RECOMMENDATION
North Bend Municipal Code Amendments Chapters 12.08,
19.06 and 19.08

of extending the utilities and conduit across the frontage of the build-site or development to the next property line shall be eligible for latecomer's agreement.

19.06.100 Installation – City engineer approval

Design and installation of new and relocated utilities shall be done by the franchise utility company. All work shall be installed in accordance with industry standards for the associated utility and shall be subject to the approval of the city engineer. The applicant and/or landowner shall provide necessary occupancy rights and easements for the pad-mounted transformers and other accessory facilities necessary for the furnishing of such utilities.

Comment [MM10]: Amends existing 19.07.030.

19.06.110 Street lighting

A. When required.

When a development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, the applicant shall provide street lighting within existing and new public rights-of-way in accordance with these standards, if existing street lighting is not already provided.

Comment [MM11]: Existing code does not specify what projects trigger street lighting.

B. Ownership.

1. Public street lights. Street lights within public rights-of-way shall be owned by the City or Franchise Utility Provider, or as otherwise determined through utility franchise agreements.

2. Private street lights. Street lights on or along private alleys, roads or streets, on private property, or not otherwise within a public right-of-way, shall be privately owned and operated.

C. Billing to franchise utility providers for energy use for all street lights internal to new residential subdivisions shall be paid for by the homeowners association of the subdivision. All street lights along all other public streets shall be paid for by the City.

D. Energy conservation lighting fixtures.

All new street lighting shall utilize LED fixtures, or other equivalent best available technology that provides sufficient lumen output while reducing energy consumption, except where necessary to match existing lighting fixtures in an infill situation. To provide warmer lighting tones that reduce glare and night-sky pollution, fixtures shall provide a correlated light color temperature not to exceed 3,000 Kelvin.

Comment [MM12]: This edit is provided based on Planning Commission request, and is based on review of International Dark Sky Association (IDA) information and comment from Jeremy Michel from Puget Sound Energy Intolight. Higher # = more blue color = more efficient. IDA recommends max of 3,000K for dark sky certification, but Mr. Michel stated that most lighting manufacturers now utilize 4,000 as the best balance between light temperature and efficiency, and that PSE installs most LED lighting at 4,000K. PC recommends 3,000K for North Bend, considering rural character.

E. Minimum lighting requirements.

Street lighting shall be provided at all intersections within and abutting the development, at the end of dead-end streets containing more than three homes, at the apex of sharp curves, and in any additional areas where determined necessary for safety by the Public Works Director, such as crosswalks. Street lighting shall utilize full cut-off fixtures to minimize glare. The street lighting shall be designed to provide a minimum light intensity at intersections as specified in the table below, or greater when determined necessary for safety by the Public Works Director. Detailed construction and facility street lighting specifications, including specified pole and fixture design in certain areas, are provided in the Public Works Standards.

Comment [MM13]: Replaces existing 19.06.020. Specifies minimum requirement that lighting required at intersections, corners and dead ends, rather than broadly throughout a development. This is a policy decision on lighting levels desired. Also now specifies full-cutoff requirement to minimize glare.

PLANNING COMMISSION RECOMMENDATION
 North Bend Municipal Code Amendments Chapters 12.08,
 19.06 and 19.08

Street Classification	Average Lighting
	Foot-Candles in areas where lighting is required
Arterial	0.6
Collector	0.4
LocalAccess/Half-Street	0.4

19.06.120 Existing City franchises not affected.

This chapter shall not affect or waive any right or obligation of a City franchise for use of the City right-of-way, and shall be applied consistent with any applicable tariffs and regulations of the Washington Utilities and Transportation Commission. If a provision of this chapter conflicts with a provision of a franchise agreement or ordinance, the provision of the franchise agreement or ordinance shall control.

Exhibit B - Existing Code for reference

EXHIBIT B

p. 1 of 4

Chapter 12.08 OVERHEAD UTILITY LINES¹

Sections:

- 12.08.003 Findings.
- 12.08.006 Underground utility policy.
- 12.08.010 Required when.
- 12.08.020 Overhead facilities – Maintenance unlawful when.
- 12.08.030 Overhead facilities – Continued use application.
- 12.08.040 Overhead facilities – Relocation time limit.
- 12.08.050 Right to receive services.
- 12.08.060 Determination of obligations.
- 12.08.070 Property owner's responsibility – Relocation.
- 12.08.080 Authority to order disconnection, removal
- 12.08.090 Violation – Penalty.

12.08.003 Findings.

The council does find that with the increased intensity of use of the properties and streets within the city that the health, safety and welfare of the residents of the community require that electric, telephone and TV cable distribution facilities be relocated underground as soon as practicable. (Ord. 374 § 1, 1973).

12.08.006 Underground utility policy.

The policy of the city shall be that as major street improvement programs are undertaken within the city and where such programs require electrical, telephone or TV cable distribution facilities relocation, such facilities shall be relocated underground. (Ord. 374 § 2, 1973).

12.08.010 Required when.

The council, when ordering the improvement of any street, whether financed by local improvement district, city funds or state or federal funds, shall determine whether the relocation of the electric, telephone, or TV cable distribution facilities underground shall be required and, if so, the manner of payment therefor. (Ord. 374 § 3, 1973).

12.08.020 Overhead facilities – Maintenance unlawful when.

It is unlawful for any person or firm to maintain or permit to be maintained any overhead electric, telephone, or TV cable distribution facilities adjacent to the underground facilities on or after 90 days from the installation of the underground facilities. (Ord. 374 § 4, 1973).

12.08.030 Overhead facilities – Continued use application.

Application may be made to the director of public works for permission to continue the use of any overhead electrical, telephone, or TV cable distribution facilities adjacent to an underground facility, when the enforcement of the terms of this chapter would cause unnecessary hardship. Appeal from the decision of the director of public works may be made to the city council and said appeal shall be filed within 20 days of the written decision of the director of public works. (Ord. 500 § 1, 1980; Ord. 374 § 5, 1973).

12.08.040 Overhead facilities – Relocation time limit.

Prior to the completion of the installation of such underground electric, telephone, or TV cable distribution facilities, the city shall notify the property owners of the time within which the relocation of overhead to underground facilities must be accomplished in order to continue to

enjoy the right to receive electric, telephone, or TV cable utility service in accordance with the applicable tariff rules and regulations on file with the Washington Utilities & Transportation Commission. (Ord. 374 § 6, 1973).

12.08.050 Right to receive services.

On and after the time established by the city, the right to continue to receive utility services shall be conditioned upon the removal of such overhead facilities. (Ord. 374 § 7, 1973).

12.08.060 Determination of obligations.

The obligations of the persons receiving electrical, telephone, or TV cable service, and the obligation of the utilities involved with respect to the cost of relocating such utility shall be as provided by ordinance of the city and the applicable tariff rules and regulations of the respective utilities as filed with the Washington Utilities & Transportation Commission. (Ord. 374 § 8, 1973).

12.08.070 Property owner's responsibility – Relocation.

Subject to the aforesaid tariff rules and regulations, it shall be the property owner's responsibility to provide all necessary labor and materials for any necessary rewiring and physical relocation of the existing facilities between the primary location and the point at which secondary service is received on the customer's premises. The property owner shall also provide necessary occupancy rights for pad-mounted transformers necessary for the furnishing of such utilities that are subject to the tariff rules and regulations filed with the Washington Utilities & Transportation Commission. (Ord. 374 § 9, 1973).

12.08.080 Authority to order disconnection, removal.

The director of public works will have the authority to order the disconnection and removal of any and all overhead electrical, telephone, and TV cable utility service supplying utility service to noncomplying property owners. (Ord. 500 § 2, 1980; Ord. 374 § 10, 1973).

12.08.090 Violation – Penalty.

Any violation of this chapter shall be remedied based on the provisions as set forth in NBMC 20.10.100. (Ord. 1088 § 3 (part), 1999; Ord. 374 § 11, 1973).

¹For statutory provisions authorizing cities to acquire and operate utilities, see RCW 35.92.050; for the provision authorizing first class cities to regulate the use of electricity upon public streets, see RCW 35.22.280(7); for provisions authorizing first class cities to determine what work shall be done and who shall bear the cost, see RCW 35.22.280 (13).

The North Bend Municipal Code is current through Ordinance 1574, passed December 8, 2015.
Disclaimer: The City Clerk's Office has the official version of the North Bend Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.northbendwa.gov/>
(<http://www.northbendwa.gov/>)
City Telephone: (425) 888-1211
Code Publishing Company
(<http://www.codepublishing.com/>)

Existing Code

**Chapter 19.06
DESIGN AND CONSTRUCTION STANDARDS FOR ELECTRICAL AND STREET
LIGHTING**

Sections:

- 19.06.010 Generally.
19.06.020 Street lighting specifications.

19.06.010 Generally.

A. All new wiring for any utilities shall be buried with pad-mounted transformers, unless exempted pursuant to subsection B of this section. Design and installation of the system shall be done by the franchise utility company. Design shall be submitted to the city engineer for review prior to installation.

B. Burying new wiring shall not be required in the following circumstances:

1. There is existing overhead wiring;
2. The aboveground wiring is located within an existing city street right-of-way;
3. The existing aboveground wiring is not an immediate threat to the public health, safety and welfare;
4. The existing aboveground wiring is being relocated solely for the purpose of allowing the maintenance, repair or reconstruction of an existing city street. (Ord. 972 § 1, 1995: Ord. 720 § 57, 1987).

19.06.020 Street lighting specifications.

Street lighting shall be provided using either mercury vapor, metal halide or sodium fixtures, mounted on poles. Poles designed specifically and exclusively for street lighting shall be break-away type. System shall be designed to provide a minimum light intensity of 0.04 footcandles within street rights-of-way. (Ord. 720 § 58, 1987).

The North Bend Municipal Code is current through Ordinance 1574, passed December 8, 2015.
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Existing Code

EX. B P. 4 of 4

**Chapter 19.07
DESIGN AND CONSTRUCTION STANDARDS FOR UNDERGROUND CABLE
TELEVISION CONDUITS**

Sections:

- 19.07.010 Undergrounding of conduits.
19.07.020 Liability for costs.
19.07.030 Installation standards – City engineer approval.

19.07.010 Undergrounding of conduits.

When a developer and/or landowner extends basic utilities to serve a building site, cable television conduits shall be laid underground at the same time as those other basic utilities. This will include only the conduits needed for street crossings and for mainline distributions of cable television to each building site throughout any proposed development. All conduit ends shall be brought to each building site property line, elbowed to the final ground elevation and capped. If the proposed development site is for multiple-family occupancy, then the conduit shall be so laid and be of sufficient dimension to ensure that cable television service may be connected to each of the proposed living units. In addition, the cable television conduit shall be extended across the proposed development and/or building site to the next property line to ensure availability of hookup to the next lot and/or building site. The conduit shall be of sufficient size and dimension to accommodate the projected maximum numbers of users for the line, such projection to be made by the city engineer. (Ord. 720 § 60, 1987).

19.07.020 Liability for costs.

The developer and/or landowner shall pay the costs required to install such cable television conduit to each individual property line, including conduit, trenching and easements; provided, the costs of extending the cable television conduit across the frontage of the build-site or development to the next property line shall be eligible for latecomer's agreement as in the case of the extension of other utilities. (Ord. 720 § 61, 1987).

19.07.030 Installation standards – City engineer approval.

All conduits shall be installed in accordance with industry standards for cable television conduits and shall be subject to the approval of the city engineer. (Ord. 720 § 62, 1987).

The North Bend Municipal Code is current through Ordinance 1574, passed December 8, 2015.

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Eric J. Schwalb
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(o) 314.628.7464



March 24, 2016

Via Email

Mike McCarty
Senior Planner
City of North Bend Community and Economic Development
126 E. Fourth St.
North Bend, WA 98045
mmccarty@northbendwa.gov

Re: Comments to Proposed NBMC Chapter 19.06

Dear Mr. McCarty:

Pursuant to the "Notice of SEPA Determination of Nonsignificance (DNS) and Public Hearing," requesting written comments to Proposed NBMC Chapter 19.06 by 4:30 p.m. on March 24, 2016, please accept these comments submitted on behalf of CenturyTel of Washington, Inc. d/b/a CenturyLink.

CenturyLink's primary concern with the existing and proposed City ordinances is the extent to which they appear to conflict with existing rights held by CenturyLink and other telecommunications companies pursuant to state law. Although the City has a right to impose certain requirements deriving from its local zoning and police powers, those laws cannot "conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities." RCW 35.99.040.

All telecommunications companies have the right to "erect poles...for supporting the insulators, wires and other necessary fixtures of their lines." RCW 80.36.040. Pole infrastructure is the most cost-effective, proven, and efficient method of deploying a wireline utility network and CenturyLink relies upon this state right to reach customers throughout the City and beyond.

The City's code is directly in conflict with these state rights. **NBMC 19.06.010** sets forth the City's preference that "all new and existing" utility facilities "be installed underground." **NBMC 19.06.020** requires "that all new facilities ...be installed underground." These code provisions are overbroad and conflict with the RCW, which specifically allows for poles to be built and maintained and indicates that poles do not inherently create a health or safety risk.

CenturyLink is further concerned with **NBMC 19.06.060**, which requires relocation to underground of facilities where necessitated by "major publicly-funded street improvements."

City of North Bend
March 24, 2016
Page 2

This code provision is silent regarding state law, which requires that a pole-owning utility must be reimbursed by the City for the incremental costs of burying facilities. *See* RCW 35.99.060(3)(b). Further, if those street improvements are undertaken with the primary goal of beautification or aesthetics, the City is required to pay the full cost of that relocation. *See* RCW 35.99.060(3)(c). Also, where street improvements are caused by a private development, the third party beneficiary is required to bear such costs. *See* RCW 35.99.060(4). Nowhere does the NBMC reflect these legal requirements, raising the likelihood of dispute in the future.

CenturyLink supports inclusion and expansion of subsection (C) in the proposed NBMC 19.06.060, which the City Administrator has suggested be struck. Utilities need a process to appeal from undergrounding demands that cause unnecessary hardship or are unlawful. Although cost is one such burden of relocation, another example arises where existing easements permit only aerial (pole) facilities. The NBMC provides that landowners shall provide an easement for certain facilities, but it does nothing to ensure that easements can be obtained at a fair price (if at all) for burial of all facilities.

In subsection (D), CenturyLink opposes a hard and fast 90-day timeframe to relocate facilities underground. Major relocations take considerable time, and require considerable planning to avoid harm to service, including 911. As noted above, easements may be difficult or impossible to obtain. Delays caused by other utilities or the City also can increase the time to complete any project. CenturyLink would prefer the City give reasonable timeframes to relocate that are based upon the totality of the circumstances (and an opportunity to challenge the request in subsection (C) above).

* * *

We hope that the City will consider CenturyLink's concerns by revising its draft code provision in accordance with state law, including provisions that make clear that installation of poles is permissible, and that relocation or undergrounding of facilities is not always at utility cost. Thank you.

Sincerely,



Eric J. Schwalb

cc: Brad Hodges, CenturyLink Supervisor Area Plant
Tina Colvin, CenturyLink Network Paralegal

Exhibit D p1 of 7

Mike McCarty

From: Nicholas, Rebecca A <rebecca.nicholas@pse.com>
Sent: Friday, March 18, 2016 11:20 AM
To: Mike McCarty
Subject: RE: City of North Bend Franchise Utilities Regulations Amendments
Attachments: New NBMC 19 06 Franchise Utilities and Street Lighting-KR comments.rtf

Hello Mike, here are the suggested edits from PSE Standards.

This is the link for relocation for Municipal relocations. If talks about acceptable systems that can be undergrounded.

http://pse.com/aboutpse/Rates/Documents/elec_sch_074.pdf

19.06.060 D, Relocation Time Limit; You may consider "Force Majeure" language since there may be instances 90 days is not enough due to (for us) storms, etc.

I will forward your voice message to Jeremy about billing the lighting systems.

Have a good weekend

Becky

*Rebecca Nicholas
Puget Sound Energy
Municipal Liaison Manager
206-716-2716
6500 Ursula Place S
Seattle, WA 98108
rebecca.nicholas@pse.com*

From: Mike McCarty [<mailto:MMCCARTY@NORTHBENDWA.GOV>]
Sent: Thursday, March 17, 2016 10:34 AM
To: 'bradley.hodges@centurylink.com'; 'terry_davis@cable.comcast.com'; 'steve@tannerelectric.coop'; Nicholas, Rebecca A
Cc: Gina Estep; Mark Rigos
Subject: RE: City of North Bend Franchise Utilities Regulations Amendments

Franchise Utility Providers,
I want to provide you with some minor updates that we have added to our earlier draft that I sent you on March 8. Note that the entire document is a new draft, but the language that has been shown in redline format is what has been added since I last sent this to you on March 8. If you haven't already started your comments to me, please use this version. Also, I need to have the staff report and updated regulations to the Planning Commission by tomorrow morning, so if you have any comments or suggested edits that you would like the City to consider and include in the Planning Commission packet, please provide those to me by tomorrow morning.

Thank you again!
Mike

Mike McCarty

Senior Planner
City of North Bend Community and Economic Development
PO Box 896
North Bend, WA 98045
phone: (425) 888-7649
fax: (425) 888-5636



From: Mike McCarty
Sent: Tuesday, March 08, 2016 4:34 PM
To: 'bradley.hodges@centurylink.com'; 'terry_davis@cable.comcast.com'; 'steve@tannerelectric.coop'; 'Nicholas, Rebecca A'
Cc: Gina Estep; Mark Rigos
Subject: City of North Bend Franchise Utilities Regulations Amendments

Franchise Utility Providers to North Bend,
The City of North Bend is updating our regulations pertaining to Franchise Utilities, including electricity, communications, gas, street lighting, and cable television. Attached you will find a notice of SEPA Determination of Non-Significance and Public Hearing for the amendments, a staff report to the Planning Commission, and the proposed draft regulations. At the back of the staff report you will also find the existing code sections for comparison, should you wish.

I have also added a word-version of the draft that contains additional proposed code language addressing the triggers for when undergrounding existing overhead utilities is required, as that section was not provided in the staff report. We would appreciate your review and comment on these draft amendments. Any suggested redline/track changes edits you may wish to provide in the word-draft would also be appreciated.

We have a public hearing on this topic at the March 24, 2016 Planning Commission Meeting, 7pm at City Hall. Thank you in advance for your review, and we would appreciate any comments you may offer.

Sincerely,
Mike

Mike McCarty
Senior Planner
City of North Bend Community and Economic Development
PO Box 896
North Bend, WA 98045
phone: (425) 888-7649
fax: (425) 888-5636



PSE Redline edits (shown in blue)

NBMC Chapter 12.08 Overhead Utility lines

NBMC Chapter 12.08 shall be repealed in its entirety. The contents of this chapter have been incorporated into the update to Chapter 19.06 as provided below.

NBMC Chapter 19.07 Design and Construction Standards for Underground Cable Television Conduits

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The provisions of this chapter shall apply to all new and existing franchise utility systems including, but not limited to, electrical (including street lighting), gas, communications, and all other franchise utilities, except for Major Utility Facilities as defined and regulated under NBMC Title 18.

19.06.020 Purpose

The purpose of this chapter is to establish minimum requirements for the underground installation and relocation of franchise utilities within the City. It is further the policy of the City to require the underground installation of all new and existing franchise utilities. The City finds that the health, safety, and general welfare of the residents of the community require that all new facilities specified in this chapter be installed underground.

19.06.030 Public Works Standards

PSE Redline Edits (in blue)

This chapter provides minimum requirements for franchise utilities and street lighting. Detailed standards and technical specifications pertaining to construction and installation of these facilities are found in the City's Public Works Standards.

19.06.040 Definitions

Unless otherwise specified below, definitions shall be as provided under NBMC Title 18, Zoning.

A. Electrical distribution facilities include those electrical utility facilities lines and equipment operating between 120 and 35,000 volts that transfer electrical power from substations along local wiring provide direct service to customers.

B. Electrical transmission facilities include those electrical utility facilities that transfer electrical powerlines and equipment operating above 35,000 volts transmitting power from generating stations to substations.

B. The terms ~~new~~ development or redevelopment for purposes of this section include any one of the following conditions;

A- 1. A land use or building permit for a new building or land use where frontage improvements are required; or

B- 2. A building permit for a project where the cost of construction equals or exceeds 50 percent of the assessed value of the existing structure on site, excluding interior remodel of existing single family residential structures and auxiliary buildings ~~or~~.

Comment [KCR1]: This is further described under NBMC Title 18, definitions.

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19.06.050 New Utilities

All new franchise utility facilities installed for new development or redevelopment shall be placed underground, with the following exceptions:

A. Electrical transmission facilities.

B. Wireless Communication Facilities (see applicable code section).

CB. Accessory franchise utility facilities less than 36 inches in height such as meters, junction boxes, transformers, and the like, when placed at least 5 feet from the edge of sidewalk, pavement edge or back of ditch and screened with landscaping compliant with franchise utility standards.

DC. Accessory franchise utility facilities greater than 36 inches in height, when located within a building or placed in a non-prominent location on the side or rear of the building or at least 30 feet from the right of way or other public areas, and located behind a minimum of five feet of Type 1 landscaping pursuant to Chapter 18.18 NBMC and franchise utility standards.

Comment [KCR2]: This statement works for large transformers but I am concerned about padmounted switchgear that is typically installed during Sch 74 conversions or in conjunction with high-density mixed use development. PSE switches serve multiple blocks of customers and are critical to electric operations during emergency restoration – We would rather they be treated differently than transformers and allowed in more prominent areas (such as 10' from ROW) for ease of identification and access. The quantity of switches PSE installs is much lower than the quantity of transformers so the aesthetic impact is not as large to locate our switches closer to the ROW.

Comment [KCR3]: http://pse.com/safety/Tree-Trimming/Documents/1225_energy_landscaping.pdf

PSE Electric Standards is also developing a screening practices standard for padmount equipment.

Comment [MM4]: Auburn provides this threshold. Do we want the same thing?????

Comment [KCR5]: Since distribution facilities are already defined per 19.06.040 A, describing the voltage of the facility seems redundant.

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19.06.060 Undergrounding of Existing Overhead Utilities

A. Undergrounding with New Development or Redevelopment. Existing aboveground wiring and related equipment for electrical distribution facilities less than 15,000 volts, communication facilities, and other purposes, except for wireless communication facilities, transformers vaults, junction boxes and the like, shall be relocated underground along the property frontage when the development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, except when either any of the following circumstances apply:

1. The right-of-way frontage of the new development or redevelopment is less than 150 feet in width along the frontage containing the aboveground wiring, and

a. the new development or redevelopment does not require relocation of the existing aboveground wiring to accommodate the required site or street frontage improvements; or

b. The right-of-way frontage of the new development or redevelopment is less than 150 feet in width along the frontage containing the aboveground wiring and the city engineer determines that the undergrounding of the portion of the existing aboveground wiring along the development or redevelopment's street frontage would require undergrounding portions of the existing of the existing aboveground wiring beyond the development's

PSE redline edits (in blue)

street frontage, unless such additional undergrounding is no more than 50 feet beyond the property line on either end of the street frontage to connect to logical points of the existing utility system; or-

2. When the total cost of undergrounding is greater than two and one-half percent of the valuation of the new development or redevelopment, as determined by the summation of the valuation on all required development permits.

Comment [MM6]: This section comes out of the Woodinville Code.

2.3. Where undergrounding is not required for a new development or redevelopment under one of the above exemptions and street frontage improvements are required, the applicant shall provide conduit within the street frontage improvements for the future undergrounding of the above ground wiring.

Comment [MM7]: Per Planning Commission recommendation.

B. Undergrounding with Publicly-Funded Street Improvements.

As major publicly-funded street improvements are undertaken within the City and where such programs require electrical, telephone or TV cable distribution facilities relocation, such facilities shall be relocated underground, unless exempted by action of the City Council.

Comment [MM8]: This is a combination of 12.08.006 and 12.08.010.

~~C. Continued Use Application.~~

~~Application may be made to the Public Works Director for permission to continue the use of any overhead electrical, telephone, or TV cable distribution facilities adjacent to an underground facility, when the enforcement of the terms of this chapter would cause unnecessary hardship. Appeal from the decision of the Public Works Director may be made to the City Council, subject to filing said appeal shall within 20 days of the written decision of the Public Works Director.—~~

Comment [MM9]: Existing 12.08.030. Proposed for deletion per City Administrator suggestion, as too vague. This is proposed for replacement with the exemption under A.2 above.

D. Relocation Time Limit.

As overhead franchise utility facilities are relocated underground, the applicant shall have all overhead connections undergrounded and shall connect to the new underground facilities within 90 days of the date of undergrounding completion. In addition, the cable television conduit shall be extended across the proposed development and/or building site to the next property line to ensure availability of hookup to the next lot and/or building site. The conduit shall be of sufficient size and dimension to accommodate the projected maximum numbers of users for the line, such projection to be made by the city engineer.

Comment [MM10]: Replaces existing 12.08.040.

19.06.070 Placement of Underground Cable Television Conduits

When an applicant and/or landowner extends basic utilities to serve a building site, cable television conduits shall be laid underground at the same time as those other basic utilities. This will include only the conduits needed for street crossings and for mainline distributions of cable television to each building site throughout any proposed development. All conduit ends shall be brought to each building site property line, elbowed to the final ground elevation and capped. If the proposed development site is for multiple-family occupancy, then the conduit shall be so laid and be of sufficient dimension to ensure that cable television service may be connected to each of the proposed living units.

Comment [MM11]: Existing 19.07.010

19.06.080 Liability for costs

The applicant and/or landowner shall pay the costs required for the franchise utility provider to install or underground the utilities, including removal of the existing overhead facilities if required, and install conduit to each individual property line, including conduit, trenching and easements; provided, the costs of extending the utilities and conduit across the frontage of the build-site or development to the next property line shall be eligible for latecomer's agreement.

Comment [MM12]: Amends existing 19.07.020

19.06.090 Installation – City engineer approval

Comment [MM13]: Amends existing 19.07.030.

PSE edits (in blue)

Design and installation of new and relocated utilities shall be done by the franchise utility company. All work shall be installed in accordance with industry standards for the associated utility and shall be subject to the approval of the city engineer. The applicant and/or landowner shall provide necessary occupancy rights and easements for the pad-mounted transformers and other accessory facilities necessary for the furnishing of such utilities.

19.06.100 Street lighting

A. When required.

When a development or redevelopment requires a subdivision or short subdivision pursuant to NBMC 17.12, a binding site plan pursuant to NBMC 17.20, or site plan approval pursuant to NBMC 18.14, the applicant shall provide street lighting within existing and new public rights-of-way in accordance with these standards, if existing street lighting is not already provided.

Comment [MM14]: Existing code does not specify what projects trigger street lighting.

B. Ownership.

1. Public street lights. Street lights within public rights-of-way shall be owned by the City or Franchise Utility Provider, or as otherwise determined through utility franchise agreements.
2. Private street lights. Street lights on or along private alleys, roads or streets, on private property, or not otherwise within a public right-of-way, shall be privately owned and operated.

Comment [MM15]: PSE proposes to convert all to they will take maintenance responsibility from City if they maintain ownership.

C. Energy conservation lighting fixtures.

All new street lighting fixtures shall utilize LED bulbs, or other equivalent best available technology that reduces energy consumption.

D. Minimum lighting requirements.

Street lighting shall be provided at all intersections within and abutting the development, at the end of dead-end streets containing more than three homes, at the apex of sharp curves, and in any additional areas where determined necessary for safety by the Public Works Director, such as crosswalks. Street lighting shall utilize full cut-off fixtures to minimize glare, except in the downtown core on North Bend Way (between the South Fork Snoqualmie River and the Cedar Falls Way roundabout), Bendigo Boulevard, and Downing Avenue as necessary to match existing decorative street lighting globes. The ~~Street~~ lighting shall be designed to provide a minimum light intensity at intersections as specified in the table below, or greater when determined necessary for safety by the Public Works Director. Detailed construction and facility street lighting specifications are provided in the Public Works Standards.

Comment [MM16]: Replaces existing 19.06.020. Specifies minimum requirement that lighting required at intersections, corners and dead ends, rather than broadly throughout a development. This is a policy decision on lighting levels desired. Also now specifies full-cutoff requirement to minimize glare.

Comment [MM17]: Per CED Committee recommendation.

Street Classification	Average Lighting
	Foot-Candles in areas where lighting is required
Arterial	0.6
Collector	0.4
Local Access/Half-Street	0.4

PSE edits (in blue)

19.06.110 Existing City franchises not affected.

This chapter shall not affect or waive any right or obligation of a City franchise for use of the City right-of-way, and shall be applied consistent with any applicable tariffs and regulations of the Washington Utilities and Transportation Commission. If a provision of this chapter conflicts with a provision of a franchise agreement or ordinance, the provision of the franchise agreement or ordinance shall control.

Mike McCarty

From: Michel, Jeremy <Jeremy.Michel@pse.com>
Sent: Thursday, March 31, 2016 10:23 AM
To: Mike McCarty
Cc: Nicholas, Rebecca A; Gina Estep; James Anderson (jim@tannerelectric.coop)
Subject: RE: New NBMC 19 06 Franchise Utilities and Street Lighting

Good Morning Mike,

Thanks for reaching out. I think it is wise to consider these issues while you are updating regulations. A little history should be shared. When LED street lighting technology was first introduced to municipalities and utilities, the color temperature was at 5,000K or even higher. The name of the game was mostly energy efficiency, while taking small amount of consideration to good lighting practices or what the customer wanted. Seattle City light was an early adopter and they continue to work through some of the challenges of their 5,000K lighting system. PSE was cautious about early adoption and we worked at length with our manufacturers and customers for several years with multiple test sites around our region. There was much to consider and a wide range of voices to be heard. Just a few years ago PSE began installing roadway lighting at 4,000K color temperature. The street lighting industry generally follows Recommended Lighting Practices established by the Illuminating Engineering Society (IES). These Recommended practices are developed through various committees and include technical members from across the US. All of our customers aim to light to minimum footcandle recommendations based on IES published ANSI/IES RP-8-14. We work closely with IES as PSE has 2 members serving on IES committees. IES and PSE work well to comply with Dark Sky Association recommendations and has for years. By practice, PSE installs Dark Sky Association compliant full cut off fixtures for municipal roadway lighting (GE Evolve Cobra Head Fixtures) at 4,000K color temperature. Generally speaking most street light providers have established 4K as their sweet spot between energy efficiency and lumen output while providing the light customers want.

PSE is able to install decorative, residential, in-plat lighting products at 3,000K color temperature and some of our municipalities are able to offer that for builders to install in plat, local classification roadways. PSE has a variety of decorative (post top, pendant mount) fixtures available in 3,000K color temperature. The City of Duvall has selected the Holophane Granville fixture at 3,000K as their in-plat standard. They did this while keeping collector and major roadway classifications to be illuminated at 4,000K color temperature.

In my opinion, I would not suggest limiting the product offered for the City. I don't think it in the best interest of good lighting practices or for the ongoing growth of North Bend. No one knows what the next street lighting technology will be and I don't recommend writing your regulations on a technology and industry that is shifting and driving to excellence, ie through better chips, drivers, etc. There would be challenges with limited product offering as well as it is PSE standard practice to install roadway lighting at 4,000K .

I would be happy to discuss further if you'd like. Feel free to give me a call directly at 425-462-3363.

Regards,
Jeremy

From: Mike McCarty [mailto:MMCCARTY@NORTHBENDWA.GOV]
Sent: Wednesday, March 30, 2016 3:00 PM
To: Michel, Jeremy; James Anderson (jim@tannerelectric.coop)
Cc: Nicholas, Rebecca A; Gina Estep
Subject: RE: New NBMC 19 06 Franchise Utilities and Street Lighting

Hi Jeremy and Jim,

As you are aware, the City of North Bend is updating our Franchise Utilities and Street Lighting Regulations. Regarding street lighting, our Planning Commission is interested to address color temperature with new fixtures (particularly with LED bulbs typically having a harsh blue-white color temperature) to further reduce glare and provide dark-sky protection. The International Dark Sky Association (IDA) provides a Fixture Seal of Approval program that requires certified lights to have a listed correlated color temperature configuration of 3,000K and lower (up to 3,220K actual measured value – ANSI C78.377). See information from their website at the following: <http://darksky.org/fsa/>

In your opinion, would it be reasonable for the City of North Bend to require new streetlights be IDA Fixture Seal of Approval certified, or otherwise require this maximum color temperature configuration? It seems like a good idea, but I'm not familiar with this program, and whether it would limit lighting fixtures to only a few manufacturers, and/or result in very costly lighting. Please let me know if you are familiar with this program, and if you have suggestions. Similarly, would it possible to simply use an amber-colored lens below the actual bulb to achieve the same result?

Thank you,
Mike

Mike McCarty

Senior Planner
City of North Bend Community and Economic Development
PO Box 896
North Bend, WA 98045
phone: (425) 888-7649
fax: (425) 888-5636



From: Michel, Jeremy [<mailto:Jeremy.Michel@pse.com>]
Sent: Thursday, March 17, 2016 1:59 PM
To: Mike McCarty
Cc: Nicholas, Rebecca A
Subject: RE: New NBMC 19 06 Franchise Utilities and Street Lighting

Hi Mike,

The terminology allows for the City OR franchise utility to own and maintain lights in the City of North Bend ROW, so it looks good to me. I suggest the edits below in yellow, to the updates you've already done. I suggest adding "fixtures" instead of lamps as lamps are old technology. The LED diodes/chips are part of the fixture- No lamps needed. And I would add "sufficient lumen output" as that's the original lighting objective, while reducing energy consumption. I've seen where a municipality will lose sight of meeting the original lighting need in effort to save money.

C. Energy conservation lighting fixtures.

All new street lighting fixtures shall utilize LED fixtures, or other equivalent best available technology that produces sufficient lumen output while reduces energy consumption.

If you need any further street lighting input, don't hesitate to reach out.

Thank you,
Jeremy

From: Mike McCarty [<mailto:MMCCARTY@NORTHBENDWA.GOV>]
Sent: Thursday, March 17, 2016 10:29 AM
To: Michel, Jeremy
Subject: New NBMC 19 06 Franchise Utilities and Street Lighting

Jeremy,

Thank you very much for the phone conversation. I'm providing you the current draft of our franchise utilities regulations, and would appreciate any comments that you might have.

Sincerely,
Mike

Mike McCarty

Senior Planner
City of North Bend Community and Economic Development
PO Box 896
North Bend, WA 98045
phone: (425) 888-7649
fax: (425) 888-5636



Exhibit B
Exhibit F p. 1 of 2

Mike McCarty

From: Jim Anderson <jim@tannerelectric.coop>
Sent: Monday, April 04, 2016 8:54 AM
To: Mike McCarty
Cc: Gina Estep
Subject: RE: New NBMC 19 06 Franchise Utilities and Street Lighting

Hi Mike and Gina,

Sorry for the delayed response I have been out of the office until today.

I agree with Jeremy on limiting your options as new technology emerges. There has been such a large improvement in LED products in just the past year you could find yourselves having to make amendments to the Franchise Utilities and Street Lighting Regulations annually. I will be meeting with our lighting representative in Spokane next week, I will do some research on your question.

In regards to the transmission line question, I believe that other than the addition of the transmission line to the new Tanner Middle Fork Substation there will be no more lines built in this area that I know of at this time. The design of these lines can be made to be as less obtrusive as possible. Tanner will design our lines to lower the visual impact and to blend the structures into the environment as well as the lines. I will meet with you soon to go over the design of the transmission line and possible structures that will be used.

Regards, Jim

James Anderson
Manager of Operations and Engineering
jim@tannerelectric.coop
425-888-0623
425-888-5688 fax



From: Mike McCarty [mailto:MMCCARTY@NORTHBENDWA.GOV]
Sent: Wednesday, March 30, 2016 3:00 PM
To: 'Michel, Jeremy' <Jeremy.Michel@pse.com>; Jim Anderson <jim@tannerelectric.coop>
Cc: Nicholas, Rebecca A <rebecca.nicholas@pse.com>; Gina Estep <GESTEP@NORTHBENDWA.GOV>
Subject: RE: New NBMC 19 06 Franchise Utilities and Street Lighting

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Thank you,

Mike

Mike McCarty

Senior Planner

City of North Bend Community and Economic Development

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THE PROMISE AND CHALLENGES OF LED LIGHTING: A PRACTICAL GUIDE

A PUBLICATION OF THE
INTERNATIONAL DARK-SKY ASSOCIATION

The light-emitting diode (LED) is transforming the way we light our cities and towns, offering a once-in-a-lifetime chance to radically improve how we use energy and our outdoor spaces at night. With this opportunity comes an obligation to manage these changes responsibly and sustainably. The stakes are high and the potential rewards great, but outcomes depend critically on policymakers and the public having access to reliable information. IDA developed this document to provide planners, lighting designers and public officials an overview of the most important aspects of LED lighting and the choices and challenges involved in its municipal implementation.

What is LED?

LEDs use solid-state technology to convert electricity into light. They are a variant of semiconductor devices that enable miniaturized computing devices like PCs and smartphones. Put simply, LEDs are very small light bulbs that fit into an electrical circuit. Unlike traditional incandescent bulbs, they don't have a filament that burns out and they don't get very warm.

Initially, LEDs only emitted red, yellow, or green light, but now white LEDs are widely available. Early LEDs were relatively inefficient regarding energy use and the amount of light emitted, but due to technological advances LED efficiency and light output have doubled about every three years. Because of their improved quality and lower prices, LEDs are now replacing conventional high-intensity discharge (HID) lamp types for outdoor lighting in communities around the world.

Why Adopt This Technology?

LEDs are very efficient at converting electrical energy to light. This means LED lighting can generate the same quantity of light for a fraction of the cost and energy usage compared to conventional lighting technologies. The use of LED lamps coupled with modern luminaire design allows for reduced illuminance without compromising safety. LEDs help lower carbon emissions by reducing the demand for energy, which is still largely produced by burning fossil fuels. Another benefit of LEDs is better control over the spectral content of light. There are many LED options available that provide accurate color rendition without emitting excessive amounts of potentially harmful blue light. (see below).

Relative to other commonly used outdoor lamps LEDs are thought to be extremely long-lived. Laboratory studies indicate lifetime ratings in the range of 25,000-100,000 hours of continuous operation, making them virtually maintenance-free. When turned on, LEDs are instantly at full brightness, unlike HID lamps that have a significant time delay. LEDs also have very low mini-

mum energy thresholds to produce light, meaning they can be dimmed to much lower illumination levels when less light is needed, resulting in further energy savings.

Product Selection Considerations

Choosing LED products for outdoor lighting applications involves a series of considerations and tradeoffs. These include:

- **Luminous Efficiency (Watts-to-lumens):** How many lumens of light are produced per input Watt of electricity? More importantly, how many lumens from the light source are meeting the task (“Fixture Lumens” vs. “Lamp Lumens”)
- **Lumen Output:** How much light is produced relative to the amount required for a particular task? When replacing existing fixtures it is important to use the only level of illumination needed, and not to adopt unneeded increases in brightness.
- **Correlated Color Temperature (CCT):** Does the light have a "warm" or "cool" quality?
- **Color Rendering Index (CRI):** How accurately does the light render colors to the human eye? A high CRI is not needed for all situations. The need for good color rendition should be considered relative to the lighting application in question.
- **Adaptive Control Integration:** Does the lighting make use of adaptive controls such as dimmers, timers, and/or motion sensors? These controls are the wave of the future in outdoor lighting and achieve additional energy savings, improve light source efficacy and increase visual task performance. It is important to build in the ability to make use of adaptive controls during the adoption of designs for new lighting installations, even if they will not immediately be implemented.
- **Heat Mitigation:** Is the lamp housing designed to adequately dissipate heat? Because LED efficiency decreases with rising operating temperature, controlling heat emitted by LED lamps is critical in warm climates.
- **Lumen Depreciation:** How robust is the lamp against efficiency loss over time? Manufacturers typically quote “L70,” the expected use time until a bulb reaches 70% of its initial light output.

Closely related to all these factors is expense: How much will LED replacement solutions cost? The price of commercial LED lighting products continues to drop, and capital cost recovery times for new LED street light installations, once 10 years or more, are now typically less than five years and continue to decline. As barriers to implementation fall, LED is gaining momentum as a lighting technology of choice in new outdoor installations.

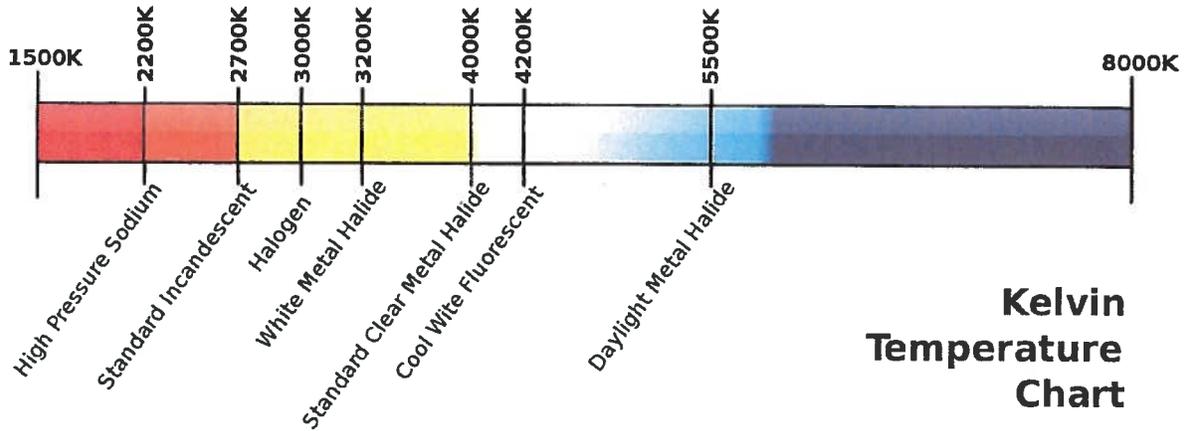
Blue Light Is Bad

New technical capabilities often come with unanticipated challenges. White LED lighting often has significant levels of potentially hazardous blue light. IDA published a report¹ in 2010 detailing the hazards of blue-rich white light sources. In the years since, scientific evidence has solidified around its conclusions.

Outdoor lighting with high blue light content is more likely to contribute to light pollution because it has a significantly larger geographic reach than lighting with less blue light. Blue-rich

¹ <http://www.darksky.org/assets/documents/Reports/IDA-Blue-Rich-Light-White-Paper.pdf>

white light sources are also known to increase glare and compromise human vision, especially in the aging eye. These lights create potential road safety problems for motorists and pedestrians alike. In natural settings, blue light at night has been shown to adversely affect wildlife behavior and reproduction. This is true even in cities, which are often stopover points for migratory species.



The promise of cheaper outdoor lighting based on electricity and maintenance savings from LED conversion should be weighed against other factors, such as the blue light content of white LEDs. Blue-rich sources are the most efficient LEDs in terms of the conversion of electricity to light, and therefore have the lowest electricity cost to produce a given amount of light compared to “warmer,” less efficient white LED lamps. Every effort should be made to diminish or eliminate blue light exposure after dark.

IDA Recommends

There are already many white LED options now available on the outdoor lighting market and that number will only rise in the future. IDA has developed a set of recommendations for those choosing lighting systems. These suggestions will aid in the selection of lighting that is energy and cost efficient, yet ensures safety and security, protects wildlife, and promotes the goal of dark night skies. These include:

- **Always choose fully shielded fixtures** that emit no light upward
- **Use “warm-white” or filtered LEDs** (CCT < 3,000 K; S/P ratio < 1.2) to minimize blue emission
- **Look for products with adaptive controls** like dimmers, timers, and motion sensors
- **Consider dimming or turning off the lights during overnight hours**
- **Avoid the temptation to overlight** because of the higher luminous efficiency of LEDs.
- **Only light the exact space and in the amount required for particular tasks**

Learn more about outdoor lighting, blue light at night, and dark skies on the IDA website at www.darksky.org.