City of

COUNCIL WORKSHOP

June 6, 2006
5:30 p.m.

AGENDA

"Where Dreams Can Soar"

Call to Order: Mayor Neil Johnson

Roll Call:
Mayor Neil Johnson, Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Phil DeLeo, Councilmember Mark Hamilton, Councilmember Dave King, Councilmember Cheryle Noble and Councilmember James Rackley.

Expected Staff Members: City Administrator Don Morrison, Director of Planning and Community Development Bob Leedy, Public Works Director Dan Grigsby, Community Services Director Gary Leaf, Interim Police Chief Buster McGehee, Chief Financial Officer Beth Anne Wroe, Judge James Helbling, City Attorney Jim Dionne and Administrative Services Director/City Clerk Harwood Edvalson.

Agenda Items

1. Proclamation: Hunger Awareness Week – Food Bank “Think Orange” Campaign. (5 Mins.)
2. Presentation: AB06-123 – Nestor Photo Traffic Enforcement System. (75 Mins.)
4. Council Open Discussion. (20 Mins.)
5. Review of Minutes: May 16th Council Workshop, May 17th Special Council Meeting, May 18th Special Council Meeting, May 23rd Council Meeting, June 1st Special Council Meeting. (5 Mins.)
9. Executive Session: RCW 42.30.110(1)(c) - The City Council will convene in executive session to consider the acquisition of real estate by lease or purchase where public knowledge regarding such consideration would cause a likelihood of increased price. (30 Mins.)
10. Adjournment.

[Times are estimates only and not intended to limit discussion.]
City of

BONNEY

Lake

PROCLAMATION

WHEREAS, healthy people and healthy communities are the centerpiece of any strong and vibrant society; and

WHEREAS, Washington State has the 9th highest rate of hunger in the nation; and

WHEREAS, on average, more than 900 residents of the greater Bonney Lake area struggle with hunger on a daily basis; and

WHEREAS, the citizens of Bonney Lake have traditionally been among the most generous people in the world; and

WHEREAS, the Bonney Lake Food Bank will be joining with all domestic hunger-relief organizations in thousands of communities nationwide in recognizing National Hunger Awareness Day 2006

NOW, THEREFORE, I, Neil Johnson, Jr., Mayor of the City of Bonney Lake, do hereby proclaim the Week from June 6th thru June 13th as Hunger Awareness Week in Bonney Lake, and encourage all citizens to support our local Food Bank’s “Think Orange” campaign during Hunger Awareness Week by obtaining and wearing an orange “Hunger Awareness” ribbon.

I further encourage everyone to recognize the dangers of hunger in our community, to give generously to those in need, and to support those actions and programs that help alleviate hunger in our community.

Mayor Neil Johnson 6/1/06
Date
City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form

<table>
<thead>
<tr>
<th>Department/Staff Contact:</th>
<th>Council Meeting Date:</th>
<th>Agenda Item Number</th>
<th>Councilmember Sponsors:</th>
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<tr>
<td>Police/Chief McGehee</td>
<td>June 6, 2006</td>
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**BUDGET INFORMATION**

<table>
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<th>2006 Budget Amount</th>
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**Explanation:**

**Agenda Subject:**

**Administrative Recommendation:** None.

**Background Summary:**
On April 10, 2006 NESTOR Traffic Systems gave a presentation to the Public Safety Committee. The presentation showed the committee NESTOR’S capabilities. The committee agreed to have the NESTOR Company conduct a one day Red Light Violation Study at the intersection of SR 410 and 184th Ave. E. The company agreed to provide a full council presentation after collecting the Red Light Violation Study. The Study was completed on April 28th, and NESTOR is ready to proceed with the full council presentation.

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<th>Council Committee Dates:</th>
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<td>Public Safety Committee: May 1, 2006</td>
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<td>Community Development &amp; Planning Committee:</td>
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**Council Action:**

Council Call for Hearing:

Council Referred Back to: Workshop:

Council Tabled Until: Council Workshop Dates: June 6, 2006

**Signatures:**

Dept. Dir. Buster McGehee
Mayor/City Administrator
Date City Attorney reviewed

Grants/everyone/ag-bl/AGBL1
## Bonney Lake, WA Rte 184 @ SR 410, East Bound (4/28/06)

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ABOUT

RED LIGHT CAMERAS

Red light camera enforcement programs are implemented to increase intersection safety by decreasing red light running and serious injury crashes at traffic signals.

1. What is the goal of the Red light Camera Enforcement System?

The goal of the program is to increase intersection safety and reduce the number of crashes caused by red light running. This goal will be accomplished by changing driver behavior through educating the public on the dangers of red light running and through consistent enforcement of red light violations.

2. What are the dangers of red light running?

Red light running is a serious problem. Approximately 1,000 people die each year, and another 200,000 are injured as a result of red light running. These figures not only include violators, but also include innocent motorists, pedestrians, and bicyclists. The annual cost of red light running in the United States is a staggering $14 billion.

3. Are red light cameras effective and what are the benefits?

Statistics show that red light cameras have proven to be effective in reducing red light violations and right-angle crashes. Throughout the United States, communities using automated enforcement typically experience a 40% to 60% reduction in violations and a 25% to 35% reduction in right-angle crashes. Red light cameras serve as an effective deterrent to red light running and have a positive safety impact. Cities using these systems consistently report safer roads with fewer intersection collisions.

4. How does the red light camera enforcement system work?

The system uses multiple cameras placed at the intersection to record video evidence of the red light runners. Using time and distance calculations, the system predicts that a vehicle will run a red light and then activates three independent video cameras. These cameras capture video evidence of the rear of the vehicle, the license plate, and a video showing the vehicle behind the stop line while the light is red and then proceeding through the intersection while the light is still red.

5. Where else are red light cameras used?

Red light cameras have been in operation worldwide for over 30 years and were first introduced to the United States over ten years ago. There are presently over 120 programs in operation in 19 states and the District of Columbia.
How to succeed when selecting a Red Light Camera System

1. **System should produce time-synchronized front and rear videos** of the violating vehicle as it approaches and proceeds through the intersection.

   **IMPORTANCE:** Allows officials to view from multiple angles whether vehicle in question was truly beyond (or behind) the stop line at the exact moment the signal turned red. Clearly shows any extenuating circumstances, such as an emergency vehicle approaching from behind the alleged violator.

2. **System should offer a Collision Avoidance safety feature** to extend the all-red phase at an intersection in the event of a red light violation. Collision Avoidance feature must be field proven for a minimum of three years.

   **IMPORTANCE:** Reinforces point that red light program is about improving intersection safety and reducing intersection collisions. As with any safety feature such as this, reliability and proven field performance is critical.

3. **System should use video for violation detection.** Vendor shall have a minimum three years experience utilizing this technology.

   **IMPORTANCE:** Video detection accuracy is widely accepted and it provides additional evidence that neither laser nor radar detection can provide. Protects investment in existing infrastructure by not requiring cutting of in-ground loops.

4. **Vendor must have in-house citation-processing capability** without third-party assistance or reliance on outsourced processing centers.

   **IMPORTANCE:** By contracting with one entity to perform all service and processing functions, a city can ensure strict quality control measures, a formal chain of custody, and the utmost security of sensitive information.

5. **Vendor must own (or have licensing rights to) all intellectual property** being offered as part of the automated enforcement system.

   **IMPORTANCE:** A city cannot assume any risk for use of technology that vendor is not properly authorized to use/deploy.
VIOLATION PROCESSING

Violation Captured
Chain of Custody begins.

CrossingGuard
RoadSide Station

Within minutes of the violation
Video evidence arrives at the Nestor Processing Center from the roadside PC via a secure network line.

Video Review
Review all violation footage.
Verify front & rear license plate.
Select images for citation input.
Input license plate number & Vehicle Information.

No Violation Occurred
(i.e. emergency vehicle)

Violation Confirmed

Violation Disapproved

Citation Approved

Violation Categorized for Monthly Report

Final Q/A Check
Final check on content and image quality

Mail Citations at U.S. Post Office
The Citation envelope will include:
a citation with 4 color images of the violation,
court instruction details &
a return payment envelope. A Certificate of Mailing form will be completed with each citation per WVC requirements

Electronic Citation Batch Transfer to Court Database
Citation data files are sent daily in a format approved by the Court.

Evidence Storage
All data & document files are stored per Washington Judicial requirements.

Final Violation Review By Police Department
City PD uses CrossingGuard Workstation to review and accept/reject violations remotely.

NTS Print Officer Approved Citations

Direct On-Line WA DMV Access
Provides vehicle & driver information.

Violation / DMV Verification / QA
Double-blind entry of license plate #’s to confirm vehicle match.
Review vehicle/driver images or RO Info
Speed and Safety

- Speed is a contributing factor in approximately 30% of fatal accidents—NHTSA (National Highway Traffic Safety Administration)

- In a nationwide survey of 27 cities conducted in 2000, National Safe Kids Campaign found two-thirds of the drivers exceeded the posted speed limits in school zones during the 30 minutes before schools started and 30 minutes after dismissal.

- Children are eight times more likely to die if hit by a motor vehicle going 30 mph vs. one going at 20 mph or less—National Safe Kids Campaign.

- Pedestrian injuries are the second leading cause of unintentional injury-related death among children ages 5 to 14. Each year 650 pedestrians ages 14 and under die traffic accidents—National Safe Kids Campaign

- In 2001, more than 47,300 children ages 14 and under were treated in hospital emergency rooms for pedestrian-related injuries—(KKAD25) Keep Kids Alive, Drive 25

- Speeding in residential neighborhoods represents the single greatest complaint issue to police departments and city council representatives throughout the U.S. (KKAD25)

- NHTSA provides suggestions to help communities develop a school transportation safety programs. It suggests working for legislation to increase penalties for speeding in a school zone.

- Speeding extends the distance necessary to stop a vehicle.
  
  - *At 20 mph the total stopping distance needed is 69 feet.
  - *At 30 mph, the distance needed is 123 feet.
ABOUT

AUTOMATED SPEED ENFORCEMENT

Automated Speed Enforcement programs are initiated to get drivers to slow down and obey posted speed limits. Through public awareness, education and consistent enforcement the Police Department and City officials want to convince drivers to obey speed limits and ultimately improve traffic safety.

1. **What is the goal of the Automated Speed Enforcement System?**
The goal of the program is to increase roadway safety and reduce the number of accidents caused by drivers who speed. This goal will be accomplished by consistent enforcement and through public awareness and education. When drivers change their behavior and obey traffic laws, the goal will be achieved.

2. **What are the dangers of speeding?**
Speeding is a serious problem nationally. Speed is a contributing factor in 31% of all fatal crashes in the United States, which means that one out of every three fatal crashes can be attributed to excessive speed. Speed related crashes costs the U.S over $40 billion annually.

3. **Is automated speed enforcement effective? What are the benefits?**
Throughout the United States, communities using automated speed enforcement typically experience a 50% reduction in fatalities and an 85% reduction in crashes at targeted speed enforcement areas. Automated speed enforcement, although new to this area, has been in use for more than 25 years in European countries and over 10 years in the U.S. This law enforcement tool has been shown to effectively reduce the incidents of speeding and vehicle crashes and also frees up public safety resources to address other safety and criminal issues.

4. **How does the automated speed enforcement system work?**
Integrated into a standard conversion van, the system uses conventional laser technology to measure vehicle speeds. Scanning the road surface and taking 100 measurements each second, the system monitors multiple lanes simultaneously. The Police Department will use this tool to consistently enforce and monitor speeds in targeted areas with known problems, including school and work zones. A Police Officer will observe and approve all speed violations in compliance with all state requirements under existing motor vehicle codes.

5. **Where are automated speed enforcement systems currently being used?**
Currently in the U.S. there are twelve states that have the ability to utilize automated speed enforcement: Washington, Ohio, Oregon, Arizona, Colorado, Illinois, Maryland, North Carolina, Tennessee, Iowa, Utah, Missouri, and now Rhode Island. Programs in these states have shown dramatic results in reducing speeding and traffic crashes attributed to excessive speed.
Mobile Speed Enforcement
Anytime . . . Anywhere

PoliScan\textsuperscript{Speed®}

LASER-BASED SPEED ENFORCEMENT

Features:
- Able to capture both directions of travel—simultaneously
- Accurate LIDAR scans multiple lanes
- Customized vehicle installation
- Incorporates latest digital cameras

Benefits:
- 200\% greater violation capture
- Undetectable to radar detectors
- Accurate multiple lane enforcement
- Highest quality images

A turnkey solution including citation processing and collection services

VERSATILITY

PoliScan\textsuperscript{Speed®} system can be installed in most vehicles or operated as a stand-alone portable unit

12.4 MEGA PIXEL DIGITAL CAMERA

SCANNING LIDAR MEASURES VEHICLE SPEED 100 TIMES PER SECOND

INVISIBLE INFRARED ILLUMINATION
In an effort to increase roadway safety and reduce traffic accidents, the City of Atlanta has initiated an automated red light enforcement program, as allowed by Section 12345 of the State Vehicle Code. A red light violation carries a $70 state-mandated fine. A 30-day warning period is in effect. During this WARNING period, fines are not assigned, therefore, no payment is required and the violation is not counted against a driver’s record.

This WARNING is based on video evidence. The vehicle identified in this WARNING was in violation of a traffic signal (red light violation). Images of the vehicle in violation and the license plate were extracted from digital video files electronically recorded at the time of the violation.

We encourage you to discuss this information with anyone who drives your vehicle. Disobeying traffic control devices is a serious offense that can result in fatal consequences.

**You do not need to respond to this WARNING.** If you have any questions regarding this Warning Notice, please call (404) 555-1212.

D. L. Chief, Chief of Police
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, ADDING A NEW CHAPTER 10.36 TO THE BONNEY LAKE MUNICIPAL CODE, AUTHORIZING THE USE OF AUTOMATED TRAFFIC SAFETY CAMERAS.

WHEREAS, some of the worst traffic accidents - those involving right-angle collisions at high rates of speed - are the result of running red lights, and studies have shown that these accidents involve more serious injury and deaths than other kinds of accidents at signalized intersections; and

WHEREAS, the strategic placement of automated cameras at these intersections to record red light running violations has been shown to reduce the frequency of violations, corresponding injuries, and associated economic costs; and

WHEREAS, some of the most tragic traffic accidents - those involving school children - are the result of speeding in school zones; and

WHEREAS, the strategic placement of automated cameras in school zones to record speeding violations has been shown to reduce the frequency of violations, corresponding injuries, and associated economic costs; and

WHEREAS, the City of Bonney Lake has numerous arterial intersections that would benefit from the strategic placement of automated traffic safety cameras; and

WHEREAS, the City of Bonney Lake has numerous school zones that would benefit from the strategic placement of automated traffic safety cameras; and

WHEREAS, the State Legislature has passed a law authorizing local jurisdictions to use automated traffic safety cameras subject to restrictions specified in that legislation;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON, DO ORDAIN AS Follows:

Section 1. A new Chapter 10.36 is hereby added to the Bonney Lake Municipal Code, to be entitled "Automated traffic safety cameras," and to read as follows:

10.36.010 Use authorized for red light violations.

The use of automated traffic safety cameras to detect a violation of RCW 46.61.055 is authorized at intersections where two arterial roadways intersect, subject to the restrictions specified in state law (RCW 46.63.170).

10.36.020 Use authorized for school zone speed violations.
The use of automated traffic safety cameras to detect a violation of RCW 46.61.440 is authorized in school speed zones, subject to the restrictions specified in state law (RCW 46.63.170).

10.36.030 Peace officer authority to issue infraction notice.

A peace officer has the authority to issue a notice of traffic infraction when the infraction is detected through the use of an automated traffic safety camera under this ordinance.

10.36.040 Infraction notices.

A. A notice of infraction based on evidence detected through the use of an automated traffic safety camera must be mailed to the registered owner of the vehicle within fourteen (14) days of the violation, or to the renter of a vehicle within fourteen (14) days of establishing the renter's name and address under subsection C1 of this section. The peace officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation of RCW 46.61.055 or RCW 46.61.440. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction.

B. A person receiving such a notice of infraction may respond to the notice by mail. The registered owner of a vehicle is responsible for such an infraction unless the registered owner overcomes the presumption in subsection E of this section, or, in the case of a rental car business, satisfies the conditions under subsection C of this section. If appropriate under the circumstances, a renter identified under subsection C1 of this section is responsible for such an infraction.

C. If the registered owner of the vehicle is a rental car business, the peace officer shall, before such a notice of infraction is issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen (18) days of receiving the written notice, provide to the peace officer by return mail:

1. A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

2. A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred; or

3. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.
Timely mailing of this statement to the peace officer relieves a rental car business of any liability under this chapter for the notice of infraction.

D. For the purposes of this ordinance, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

E. In a traffic infraction case involving an infraction detected through the use of an automated traffic safety camera, proof that the particular vehicle described in the notice of traffic infraction was in violation of RCW 46.61.055 or RCW 46.61.440, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred. This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner. (RCW 46.63.170 and RCW 46.63.075)

10.36.050 Monetary penalties.

A traffic infraction for violation of RCW 46.61.055 or RCW 46.61.440 detected through the use of an automated traffic safety camera shall be processed in the same manner as a parking infraction, with a base monetary penalty of $25.00 in addition to applicable statutory assessments under RCW 46.63.110; however, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for parking infractions within the City.

10.36.060 Signage.

All locations where an automated traffic safety camera is used shall be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

10.36.070 Compensation for Services.

The compensation paid to the manufacturer or vendor of the automated traffic safety camera equipment used shall be based only upon the value of the equipment and services provided or rendered in support of the system, and shall not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.
Section 2. This Ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five days as required by law.

PASSED by the City Council and approved by the Mayor this ____ day of ____________, 2006.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, CMC, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

Passed:
Valid:
Published:
Effective Date:

Deleted: [MANDATORY PROVISIONS REGARDING EFFECTIVENESS, PUBLICATION, ETC.]
NESTOR TRAFFIC SYSTEMS, INC.
AND THE
CITY OF BONNEY LAKE, WASHINGTON
TRAFFIC SIGNAL VIOLATION VIDEO-ENFORCEMENT SYSTEM
AND MOBILE SPEED ENFORCEMENT SYSTEM
LEASE & SERVICES AGREEMENT

This AGREEMENT (the “Agreement”) made this ____ day of April, 2006, by and between Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at 42 Oriental Street, Providence, RI 02908 (“Nestor”), and the City of Bonney Lake, a municipal corporation of the State of Washington, having an address of 19306 Bonney Lake Blvd., Bonney Lake, Washington 98391-0944 (the “Municipality” and together with Nestor, the “Parties” and each singularly a “Party”).

WHEREAS, the Parties desire to enter into this Agreement, whereby Nestor will (i) install and assist the Municipality in the administration and operation of CrossingGuard® traffic signal violation detection systems and Poliscan™ speed detection systems described in more detail in Exhibit A to this Agreement (the “System”) at the intersections and roadways located within the Municipality, and provide to the Municipality the services (the “Services”), all as more fully described in Exhibit A, and (ii) in connection with the Services, license certain software and lease certain equipment to the Municipality.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

1. SERVICES

1.1. Nestor agrees to use commercially reasonable efforts to install and provide to the Municipality for the Term the System consisting of the CrossingGuard and Poliscan equipment (the “Equipment”) and software (the “Software”) to be supplied and installed by Nestor in accordance with Exhibit A (including the provision of all construction drawings, permit applications and other documents required by applicable law for the installation and operation of the System). In addition, if and to the extent set forth in Exhibits A, B, and C, Nestor shall also supply to the Municipality:

   (i) citation preparation processes that assist the Municipality in complying with current applicable law;

   (ii) training of personnel designated by the Municipality involved with the operation of the System and/or the enforcement and disposition of citations;

   (iii) expert witness testimony regarding the operation and functionality of the System; and

   (iv) other support services for the System as set forth in Exhibit A.
1.2. If and to the extent the Municipality has or obtains during the Term (as hereinafter defined) custody, possession or control over any of the Equipment or Software, the Municipality agrees:

(i) such Software, if manufactured by Nestor, is supplied under the license set forth in Exhibit B (the “License”) to which the Municipality agrees;

(ii) such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the Municipality acknowledges receiving and to which it hereby agrees; and

(iii) such Equipment is supplied under the lease terms set forth in Exhibit C (the “Lease”) to which the Municipality hereby agrees.

1.3. The Municipality understands and agrees that (i) Nestor may, subject to the prior approval of the Municipality, which approval shall not be unreasonably delayed, conditioned or withheld, subcontract with third parties for the provision or installation of part or parts of the System or Services and (ii) installation of the System requires the Municipality’s cooperation and compliance with Nestor’s reasonable instructions (including but not limited to Municipality’s provision of the personnel, equipment, engineering plans, and other resources as described in Exhibit A or as otherwise reasonably requested by Nestor) and reasonable access by Nestor (or such third parties) to Municipality premises and systems and the Municipality agrees to provide all of the foregoing to Nestor.

1.4. The Municipality understands and agrees that the System will be owned by Nestor (or its designees). The Municipality agrees to reimburse Nestor for costs incurred to repair any damage to the System caused by the Municipality or any of the Municipality’s employee’s, agents, or independent contractors (other than Nestor). The Municipality shall use its best efforts to assist Nestor to identify and obtain compensation from any third-party who is responsible for damage to the System or any part thereof.

1.5. Nestor shall coordinate its work with the Municipality’s police, public works and engineering departments and, as necessary, with the Washington Department of Transportation.

1.6. The Municipality shall be responsible for (i) monitoring the current status of applicable law which affects or pertains in any way to the System, its operation, or the processing of citations produced through use of the System and (ii) promptly notifying Nestor of any changes or developments in such applicable law. In the event of any change in the law materially and adversely affects the operation of the System by the Municipality as contemplated hereby, the Parties shall work together in good faith to adapt the System, or otherwise make such changes to the System, so that the Municipality can use it for its purposes but neither Party shall be required to incur unreasonable expense unless the Parties agree on sharing such expenses in an equitable manner. If such adaptation or change cannot be made without unreasonable expense, or the Parties cannot agree on sharing any such expense in an equitable manner, the sole and exclusive remedy of the Parties shall be termination in accordance with Section 3.2.
2. TERM

The initial term of this Agreement, the License and the Lease shall begin upon the date of this Agreement and shall continue until the third anniversary of the Installation Date (the "Initial Term"). Thereafter, this Agreement and the License may be extended by up to two thirty-six month terms, with negotiated modifications (the "Renewal Term" and together with the Initial Term, the "Term"). The "Installation Date" shall be the latest date that a CrossingGuard System becomes installed and operational at any of the intersections described in Sections 1.1 or 1.2 of Exhibit A.

3. TERMINATION AND EXPIRATION

3.1. (i) This Agreement may be terminated by either Party if the other Party defaults in the performance of any obligation under this Agreement and such default continues for more than thirty (30) days after notice thereof to the defaulting Party.

   (ii) This Agreement may be terminated at any time by mutual agreement of the Parties.

   (iii) In the event that on or before July 31, 2006, no ordinance has been adopted by the Municipality complying with Section 46.63.170 of the Revised Code of Washington (or any successor to such statute) authorizing the use of automated traffic safety cameras for detection of stoplight violations, then this Agreement shall terminate on said date with respect to the provision of equipment and services relating to automated traffic safety cameras for detection of stoplight violations.

   (iv) In the event that on or before July 31, 2006, no ordinance has been adopted by the Municipality complying with Section 46.63.170 of the Revised Code of Washington (or any successor to such statute) authorizing the use of automated traffic safety cameras for detection of school zone speed violations, then this Agreement shall terminate on said date with respect to the provision of equipment and services relating to automated traffic safety cameras for detection of school zone speed violations.

3.2. Nestor may terminate this Agreement, without liability, on thirty (30) days advance notice if Nestor concludes in its sole discretion that (i) potential or actual liability of Nestor to third parties (other than persons claiming to own Intellectual Property required for the operation of the System) arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue and/or (ii) the Parties have been unable to bring the System into compliance with any change or development in the law as provided in Section 1.6. The Municipality may terminate this Agreement on thirty (30) days advance notice if Municipality concludes in its sole discretion that (i) potential or actual liability of Municipality to third parties arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue and/or (ii) the Parties have been unable to bring the System into compliance with any change or development in the law as provided in Section 1.6.

3.3. In the event that this Agreement is terminated before the end of the Initial Term, except in the cases of termination of this Agreement by mutual agreement pursuant to Section
3.1(ii), by Nestor pursuant to clause (i) of Section 3.2 or by the Municipality pursuant to Section 3.1(i), (iii) or (iv), the Municipality shall be responsible and pay to Nestor on demand the termination and cancellation fee set forth in Section 4.3 (For example, such fee shall be due if the Municipality terminates pursuant to Section 3.2). Except as provided in this Article 3, termination of this Agreement pursuant to Section 3.1(i) shall not relieve the breaching Party of any liability it may have under this Agreement or pursuant to law to the non-breaching Party.

3.4. Upon termination or expiration of this Agreement, the Municipality shall immediately cease using the Software and Equipment in its possession, custody or control and shall (a) immediately allow Nestor a reasonable opportunity to remove such Equipment and (b) (i) immediately deliver to Nestor or irrevocably destroy, or cause to be so delivered or destroyed, any and all copies of such Software in whatever form and any written or other materials relating to such Software in the Municipality’s possession, custody or control and within thirty (30) days deliver to Nestor a certification thereof or (ii) allow Nestor reasonable access to the system(s) on which such Software is loaded and permission to Nestor to remove such Software and documentation. Termination or expiration of this Agreement shall not relieve the Municipality of any obligation to pay fees or other amounts due or accrued prior to such installation or termination. This Section 3.4, as well as Sections 3.3, 6.2, 6.3, 6.4, 7 and 9 of this Agreement, Sections 4, 7, 8 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease.

3.5. Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in the last sentence of Section 3.4, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

3.6. Notwithstanding anything in this Agreement that may be to the contrary, the sole remedy of the Municipality, and the sole obligation of Nestor, for any uncured breach of Articles 1 and 6 of this Agreement by Nestor shall be termination of this Agreement and, if applicable, indemnification pursuant to Section 7.

4. FEES AND PAYMENT

4.1 (a) For the CrossingGuard red light enforcement Systems, the Municipality shall pay Nestor a fee equal to $4800 per month for each Installed Approach for the Services and Software as described in Exhibits A & B hereto and the installed equipment in accordance with the Lease Agreement attached as Exhibit C hereto (the “Monthly Fee”).

“Installed Approach” shall mean a signalized direction of travel on an individual access road or street to any intersection that is monitored by the System. If and to the extent that (1) an Installed Approach subject to a Monthly Fee is not capable of detecting violations or (2) Nestor is unable to print and/or mail Citations, in either case, for more than three (3) consecutive business days in any calendar month as a result of system malfunctions not caused by Municipality or an event described in Section 9.9 of the Agreement (collectively and each individually, an "Event"), NTS will allow a credit against the monthly fee for Services and Software for such Installed Approach for that month equal to: such Installed Approach’s
monthly fee for Services and Software multiplied by: (a) the total number of days the approach was incapable of detecting violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event, divided by (b) thirty (30) days.

(b) For the Poliscan Mobile Speed Enforcement Unit(s), the Municipality shall pay Nestor a fee equal to $3000 per month for Speed Enforcement Unit for the installed equipment in accordance with the Lease Agreement attached as Exhibit C hereto and a fee of $150 per hour of operation of each Speed Enforcement Unit for the Services and Software as described in Exhibits A & B (including an employee of Nestor), subject to a minimum of twenty hours per week per Speed Enforcement Unit.

4.2 Unless provided otherwise in Section 3.3 and subject to the remainder of this Section 4.2, the termination and cancellation fee for each Installed Approach shall equal the product of $80,000 multiplied by the product of: (a) the Remaining Term divided by (b) thirty six (36). The “Remaining Term” shall equal thirty six (36) minus the number of whole months from the date that the Installed Approach in question became operational to the date of termination. There is no termination and cancellation fee for the Speed Systems.

4.3 Except for any termination and cancellation fee and other charges owed pursuant to Sections 4.2 or 5.5, which is due on demand, payment of all fees and other charges owed pursuant to this Agreement is due within thirty (30) days after invoice date. Invoices will be sent to the Municipality at:

City of Bonney Lake
19306 Bonney Lake Blvd.
Bonney Lake, Washington 98391-0944
Attn: 

4.1. Unless the Municipality provides Nestor with evidence of an exemption therefrom, prices do not include federal or state excise, sales, use or other similar taxes or charges. The Municipality agrees to indemnify and hold harmless Nestor from any liability arising out of any such tax or charge if charged against Nestor. If incurred, such taxes or charges may be invoiced at any time.

5. Responsibilities of the Municipality

5.1. The Municipality shall provide Nestor with such “as built” drawings in electronic format (AutoCad) as Nestor, in Nestor’s reasonable discretion, may require for the preparation of drawings for the installation of the System and shall approve Nestor’s engineering drawings without unusual or unreasonable cost or delay.

5.2. The Municipality shall not levy any permit fees or, if municipal ordinance requires the assessment of fees, the Municipality shall waive or be responsible for such fees associated with the installation of the System.

5.3. The Municipality shall prosecute citations in court at its own expense and shall defend any challenge in any court to the use of the System or validity of its results and/or the use of the U.S. Mails to deliver the citation. Nestor may, at its own expense, participate in any
proceeding challenging the use of the System or validity of its results and/or use of the U.S. Mail to deliver the citation. The Municipality reserves the right to prosecute or decline to prosecute any citations, to appeal or fail to appeal, or to dismiss any proceeding on any citation in its absolute discretion.

5.4. The Municipality shall provide electrical connections at the roadside and pay for power required by the System.

5.5. To allow for proper operation of the System, the Municipality shall provide Nestor with advance written notice of any modifications proposed to intersections, including traffic signal operations, after installation of a System. In the event any such intersection modification requires a material change to the System, the Municipality shall pay the costs reasonably incurred by Nestor to adapt the affected Installed Approach(es) to make such Installed Approach(es) compatible therewith. Notwithstanding the above, Nestor makes no guarantee that it will be able to make any such adaptation. In addition, Nestor does not, and will not, make recommendations or otherwise manage the configuration or operation of the intersection traffic light system.

5.6. The Municipality shall provide such assistance as may be required for Nestor to obtain any information and approvals from the Court(s), other governmental instrumentalities, or entities necessary or desirable for Nestor to provide the Services.

5.7. During the Term, except as expressly permitted by this Agreement the Municipality shall not use the System, or allow the System’s use by a third party, without the prior written permission of Nestor.

5.8. The Municipality will provide schedules of when and where to deploy mobile speed vans on a consistent and timely basis so as to allow Nestor adequate time to retain and organize the necessary resources.

6. LIMITED WARRANTY AND LIMITATION ON DAMAGES

6.1. Nestor warrants that the System's functionality will conform in all material respects to the description of the System set forth on Exhibit A. This warranty does not apply if the Municipality has failed to make all payments to Nestor required by this Agreement or as set forth in, and is subject to the conditions of, Section 6.4.

6.2. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NESTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INFRINGEMENT WITH ENJOYMENT, ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. MUNICIPALITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO MUNICIPALITY BY OR ON BEHALF OF NESTOR OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.
6.3. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL NESTOR BE LIABLE TO THE MUNICIPALITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING ANY DAMAGES FOR LOSS OF INFORMATION, PROFITS, OR SAVINGS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE SYSTEM, THE SERVICES OR THE USE OF OR INABILITY TO USE THE SYSTEM OR THE SERVICES, EVEN IF NESTOR OR AN AUTHORIZED NESTOR REPRESENTATIVE IS AWARE, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

6.4. The Municipality acknowledges and agrees that:

(a) The System may not detect every red light or speed violation;

(b) Since the System may flag as a violation conduct that is in fact not a violation, the output of the System will require review, analysis and approval by personnel appropriately qualified and authorized by the Municipality under applicable law prior to the issuance of any citation;

(c) The System may not detect every event for which it is desirable to recommend extension of the red light phase;

(d) The System has no control over, and relies on the proper functioning of Municipality supplied equipment for signal light changes;

(e) The proper functioning of the System requires the Municipality’s full and complete compliance with the Systems’ operating instructions, which it hereby agrees to do; and

(f) The Municipality shall be responsible for the configuration and/or operation of all intersection traffic light systems and Nestor shall have no liability or obligations with respect thereto.

7. INDEMNITY

7.1 Nestor agrees to indemnify, defend, and hold harmless the Municipality from any claim of damages (including the payment of reasonable attorneys’ fees) by a third party arising solely from either (a) a finding that the System infringes any validly issued United States patent or (b) Nestor’s negligence, provided that such claim of damages is not attributable to (i) any act or omission set forth in Section 7.2 or (ii) any third-party software or other third-party products used with, required for use of, or supplied under their own names with or as part of the System. If, as a final result of any litigation of which Nestor is obligated to indemnify, the use of the System by Municipality is prevented, in whole or in part, by an injunction, Nestor’s sole obligation to the Municipality as a result of such injunction shall be, at Nestor’s option, either to (i) replace such part as has been enjoined, or (ii) procure a license for Nestor or the Municipality to use same, or (iii) remove same and terminate this Agreement at no additional cost to the Municipality.
7.2 Anything to the contrary notwithstanding, Nestor assumes no obligation or liability for, and the Municipality will indemnify, defend, and hold harmless Nestor, its affiliates, officers, directors, shareholders, agents, and employees from any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) Nestor's compliance with any designs, specifications, or instructions of the Municipality, (ii) any modification of the System made by the Municipality, (iii) the negligence or intentional act of Municipality, (iv) failure of the Municipality to use the System in the manner described by Nestor, (v) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the Municipality (other than that supplied by Nestor), (vi) the review and analysis of the System data output by Municipality personnel for citation preparation, (vii) the Municipality's use and/or administration of any traffic signal.

7.3 The rights of a Party seeking indemnification under this Section 7 shall be conditioned upon (i) the indemnified Party notifying the indemnifying Party promptly upon receipt of the claim or action for which indemnification is sought (but the failure to do so shall not relieve the indemnifying Party of its obligations under this Section 7 unless it is, and then only to the that extent it is materially prejudiced thereby) and (ii) the indemnified Party's full cooperation with the indemnifying Party in the settlement or defense of such claim or action at no cost to the indemnifying Party (except for reasonable out-of-pocket traveling expenses). Such cooperation shall include, but not be limited to, the Municipality providing access for, and permission to, Nestor for the purpose of the replacement of such part or parts of System as Nestor may deem necessary or desirable. An indemnified Party may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that the indemnifying Party shall remain in, and responsible for, control of the matter. This Section 7 states the entire liability and obligation and the exclusive remedy of the Parties with respect to any actions or claims (i) of alleged infringement relating to or arising out of the subject matter of this Agreement or (ii) otherwise the subject of this paragraph.

8. INSURANCE

Nestor represents that it and its employees are protected against the risk of loss by the following insurance coverage:

(a) Comprehensive general liability insurance with a combined single limit of $1,000,000 per person because of loss arising from a single occurrence, with an aggregate liability per occurrence of $2 million.

(b) Workers Compensation as required by applicable state law; and

(c) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Nestor with a minimum $1,000,000 per occurrence combined single limit bodily injury and property damage.

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of Washington and shall name as additional insured the Municipality, its elected officials, officers, employees, agents and
representatives and the State of Washington and its elected officials, employees, agents and
representatives. Nestor will furnish Municipality with Certificates of Insurance and applicable
endorsements for all such policies promptly upon receipt of them. Nestor may effect for its own
account insurance not required under this Agreement.

9. MISCELLANEOUS

9.1. Except as specifically provided in this Agreement, this Agreement may not be
assigned, nor may performance be delegated, by either Party without the express written consent
of the other Party, except that Nestor may assign, delegate performance or otherwise encumber
this Agreement, the License and the Lease (a) for the purpose of obtaining financing, (b) to any
entity owned or controlled by Nestor or (c) to any third party that acquires all or substantially all
of Nestor’s assets.

9.2. The headings and captions used in this Agreement and the Exhibits are for
convenience only and are not to be used in the interpretation of this Agreement.

9.3. The failure of either Party to require performance of any provision of this
Agreement shall not affect the right to subsequently require the performance of such provision or
any other provision of this Agreement. The waiver of either Party of a breach of any provision
shall not be taken or held to be a waiver of any subsequent breach of that provision or any
subsequent breach of any other provision of this Agreement.

9.4. If any covenant or provision of this Agreement is, or is determined to be, invalid,
illegal or unenforceable by a court of competent jurisdiction or by an arbitration panel lawfully
appointed as provided herein, all remaining covenants and provisions of this Agreement shall
nevertheless remain in full force and effect, and no covenant or provision of this Agreement shall
be deemed to be dependent upon any covenant or provision so determined to be invalid, illegal
or unenforceable unless otherwise expressly provided for herein.

9.5. This Agreement has been entered into, delivered and is to be governed by,
construed, interpreted and enforced in accordance with the laws of the State in which the
Municipality is located (without giving reference to choice-of-law provisions) from time to time
in effect.

9.6. Except as set forth in this Agreement and the Exhibits hereto, no representation,
statement, understanding or agreement, whether written or oral, has been made and there has
been no reliance on anything done, said or any assumption in law or fact with respect to this
Agreement for the duration, termination or renewal of this Agreement other than as expressly set
forth in this Agreement and there has been no reliance upon anything so done or said that in any
way tends to change or modify the terms or subject matter of this Agreement or to prevent this
Agreement from becoming effective. This Agreement supersedes any agreements and
understandings, whether written or oral, entered into by the Parties hereto prior to the effective
date of this Agreement.

9.7. This Agreement may be modified or amended from time to time by the Parties,
provided, however, that no modification or amendment hereto shall be effective unless it is stated
in writing, specifically refers to this Agreement and is executed on behalf of the Party against whom enforcement of such modification or amendment is sought.

9.8. Except as otherwise specified, all notices, payments and reports hereunder shall be deemed given and in effect as of the date of mailing or transmission, as the case may be, when sent by next day delivery or courier service, postage pre-paid, or three days after the date of mailing when sent by first class mail, postage pre-paid, addressed in all such cases to the Parties as set forth in the preamble to this Agreement directed in each case to the President of Nestor at the address in the preamble or the _______________ of the Municipality at the address in the preamble, or to such other addresses as the Parties may from time to time give written notice of as herein provided.

9.9. Except for the obligation to make any payment of money, neither Party shall be liable to the other for failure or delay in meeting any obligations hereunder which arises in whole or in part from causes which are unforeseen by, or beyond the control of, such Party, including without limitation, acts of God or of a public enemy, acts of the Government (other than the Municipality in the case of the Municipality) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts or omissions of (i) non-subcontractor third-parties and (ii) third party equipment, telecommunications and software suppliers, and unusually severe weather. When any such circumstance(s) exist, Nestor shall have the right, in its sole discretion, to allocate its available production, deliveries, services, supplies and other resources among any and all buyers (whether or not including the Municipality), as well as among departments and affiliates of Nestor, without any liability to the Municipality.

9.10. Venue for any lawsuit seeking enforcement of or arising out of the terms of this Agreement shall be in the Superior Court of Washington in and for Pierce County. The substantially prevailing party in any such lawsuit shall be entitled to an award of costs and reasonable attorney’s fees.

9.11. The Municipality shall use the Proprietary Information only for the purpose of fulfilling its duties hereunder (the “Purpose”) and such Proprietary Information shall not be used for any other purpose without the prior written consent of Nestor. “Purpose” shall be deemed to not include any disclosure of the Proprietary Information to any person or entity. The Municipality shall hold in confidence, and shall not disclose to any person or entity, any Proprietary Information nor exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of the Company. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not prohibit the Municipality from disclosing Proprietary Information to the extent required in order for the Municipality to comply with applicable laws and regulations, provided that the Municipality provides prior written notice of such required disclosure to the Company. As used in this Agreement, the term “Proprietary Information” shall mean all trade secrets or confidential or proprietary information designated as such by Nestor, whether by oral statements, letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by Nestor to the Municipality. In addition, the term “Proprietary Information” shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient which contain,
reflect or are based upon, in whole or in part, any Proprietary Information furnished to the Municipality.

[Signatures appear on following page.]
IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

By: __________________________
   Name: Nigel P. Hebborn
   Title: President and CEO

CITY OF BONNEY LAKE,
WASHINGTON

By: __________________________
   Name: ________________________
   Title: ________________________
EXHIBIT A

SERVICES

Nestor shall provide the Municipality with the System. In connection with furnishing the System, Nestor shall provide the following, each of which is more fully described below:

1. Site Installation Planning; Design and Equipment Installation
2. User Training and Support
3. Citation Preparation and Processing Services
4. Maintenance and Support
5. Public Education Campaign
6. Expert Witness Testimony and Court Training
7. Violation Review Station
8. Reporting
9. Meetings

1. Site Installation Planning, Design and Equipment Installation

1.1 The Systems.

(1) A minimum of six (6) video monitoring systems shall be installed initially, monitoring six (6) approaches at a maximum of three (3) intersections to be designated in writing by mutual agreement of City and Nestor. Additional video monitoring systems may be added at the option of the Municipality. The System shall be comprised of equipment capable of monitoring the following traffic approaches at the following intersections:

<table>
<thead>
<tr>
<th>Intersections</th>
<th>Approaches Enforced</th>
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</table>

(2) The provision of a minimum of one Mobile Speed Enforcement Unit (which shall remain property of Nestor) and a Nestor employee to operate, of which the Municipality will deploy for not less than twenty hours of enforcement service per week per Unit.

1.1.2. The System shall include all equipment located at each intersection, all equipment in the Municipality Police Department (including court laptop), telecommunications equipment, and Software and shall have the capability of transferring images from the roadside to the Municipality’s Police Department processing facility.

Ex. A-1
1.2. **Substitution or Addition of an Intersection.** If Nestor or the Municipality reasonably determines that one or more of the above intersections is not for any reason appropriate for the System (and such determination is made at least fifteen (15) days prior to the commencement of installation of the System at any such intersection), then alternate intersection(s) may be substituted by written consent of the Municipality and Nestor.

1.2.1. After the commencement of installation activities, the Municipality may request that Nestor relocate any existing and operating System for an individual intersection to an alternate location (to be mutually agreed to by the Municipality and Nestor).

1.2.2. If the Municipality notifies Nestor that it desires to install the System at additional intersections, Nestor shall install the System at such intersections (subject to all the terms and conditions of this Agreement), and the fee payable under Section 4.1 shall increase to take such Installed Approach(es) into account.

1.3. **Timeframe for Installation of the System.** Nestor shall install and activate the System in accordance with an Implementation Plan to be mutually agreed to by Nestor and the Municipality. Nestor shall use reasonable commercial efforts to install the System in accordance with the schedule set forth in the Implementation Plan. The Municipality agrees that the estimated dates of installation and activation of the System set forth in the Implementation Plan are subject to delay based on conditions beyond the control of Nestor and are not guaranteed. If Nestor fails to use reasonable commercial efforts to install or activate the System at any contemplated Installed Approach, the Municipality may, upon thirty (30) days advance written notice and without liability to either Party, cancel this Agreement as it pertains to such contemplated Installed Approach and the Municipality may cancel this Agreement without liability to either Party as it pertains to a contemplated Installed Approach if such Installed Approach is not activated within six (6) months from the date set forth in the Implementation Plan.

1.4. **Installation/Ownership of the System.** Nestor shall procure, install and provide support of traffic signal violation detection equipment (computer hardware, software, cameras, camera housing and mounts, communications equipment and roadside controller cabinets) as specified herein and in the Proposal at each of the designated intersections provided for above. As between Nestor and the Municipality, all components for the System will remain the property of Nestor.

1.5. **Installation**

1.5.1. Nestor shall submit plans and specifications to the Municipality for review and approval, which review and approval will not be unreasonably withheld, delayed or conditioned. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to practice in the State in which the Municipality is located. Nestor shall provide at least three sets of drawings of the wiring for the System circuitry.

1.5.2. All cameras and other equipment shall be enclosed in lockable, weather and vandal-resistant housing. All wiring shall be internal to equipment (not exposed) and if Ex. A-2
commercially reasonable and if capacity exists, underground in existing traffic signal conduits, except where required to directly interface with the traffic signals and electrical service. Separate conduits or overhead wiring may be used by Nestor if existing conduit(s) are at capacity. If existing conduits are used, the Municipality will not unreasonably withhold, delay or condition consent to such use.

1.5.3. The System shall be electrically isolated from the traffic signal system using industry-standard practice and methods, and shall not interfere with existing traffic signal equipment and detectors. In the event that Nestor and the Municipality cannot agree on the method of isolation, the Municipality shall procure, at its own expense, such equipment or means to accomplish the isolation or to meet the requirements of such.

1.5.4. The System may be mounted on or utilize support of existing traffic signal poles, arms or other intersection structures where possible, subject to Municipality review and approval, such review and approval not to be unreasonably withheld, delayed or conditioned.

1.5.5. The System poles, foundations and new infrastructure, as required, shall conform to applicable law. The Municipality shall be solely responsible for remediation that may be required with respect to such poles, foundations and new infrastructure if such remediation is required due to conditions not caused by Nestor.

1.5.6. Nestor shall notify the Municipality at least 48 hours prior to interfacing with traffic signal equipment. Nestor shall be responsible for installing all its wiring into Municipality cabinets.

1.5.7. To the maximum extent permitted by law, the Municipality shall waive any permit and licensing fees for any System construction and installation.

1.5.8. All equipment shall be installed so as to minimize the aesthetic impact on the streetscape.

1.6. Restoration of Intersections. Upon termination or expiration of the Agreement, Nestor shall remove the System and restore the affected public facilities including returning the intersections to their original condition; provided, however, that Nestor shall not be required to remove any conduit, in-ground fixture, underground wiring or other infrastructure that will require excavation or demolition. All costs incurred by Nestor thereby will be the responsibility of Nestor.

1.7. Compliance with Law. Nestor shall design and install the System in compliance with all currently existing federal, Washington and municipal laws and regulations, including but not limited to 18 U.S.C. Section 2721 and RCW Section 46.63.170. The Municipality shall notify Nestor of any applicable law in addition to those set forth herein.

2. Production of Video Files. The System shall be capable of producing digital moving video files of red light violations sufficient (as further set forth and limited in Section 6.1) to (i) identify the make of motor vehicles traveling through the intersection from

Ex. A-3
each monitored approach during the red light phase, (ii) capture images of the driver’s view of the traffic signal, the approaching vehicle as viewed from the intersection, the position of the vehicle in the intersection in violation of the red light phase, and clearly showing (if normally located and visible) the number or other identifying designation of the license plate displayed on the vehicle, and (iii) record the intersection and the violation date and time. All images shall be sent electronically from the roadside and shall be capable of being viewed on-line by the Municipality Police Department personnel. The System shall permit the Municipality to archive all such images in accordance with any requirements of the Washington Records Act of which the Municipality has advised Nestor.

3. Training of Municipality Personnel. After System installation, Nestor shall provide up to eight (8) hours of training for up to twenty (20) persons at two (2) sessions at the Municipality’s facilities to acquaint Municipality personnel with System operation. Training shall consist of instructional and operational training as well as hands-on equipment exercises with an instructor. All necessary training materials and documentation will be provided by Nestor at Nestor’s expense. Nestor shall make all such training services available to the Municipality prior to the end of the thirty (30) day period following the Installation Date. If the Municipality requests additional courses or training, Nestor shall provide these on a cost reimbursement basis.

4. Citation Preparation and Processing Services

4.1. Citation Preparation and Processing. Nestor shall perform the initial review of all data generated at the roadside, process and format violations utilizing a computerized traffic citation program that shall store all information required for citation processing by Washington and Municipality law (“Citation Composer”), and transfer the citations to the Police Department’s CrossingGuard computer for review and decision on whether or not to issue a citation. If Nestor is permitted by applicable law or regulation to do so, Nestor shall also review all DMV information and print and mail citation forms. Nestor shall pay all mailing and postage costs, and such other miscellaneous costs and expenses as may be reasonably necessary to issue a citation and deliver it by U.S. mail. To the extent required by applicable law, Nestor shall obtain a certification of mailing issued by the Post Office. Notwithstanding anything to the contrary in the foregoing provisions of this Section 4.1, Nestor will not process nor support any citations not captured by the System and/or approved by the Municipality.

4.1.1. Mailing of Citations. Citations shall be mailed to the violator as soon as is reasonably practicable after being approved by the Municipality and transmitted to the processing center (managed by Nestor or such third party, to whom Nestor has delegated such operation, on behalf of the Municipality). The form of citation shall be subject to the approval of the Municipality, which approval may not be unreasonably delayed, conditioned or withheld.

4.1.2. Cooperation With Police and the Courts. Nestor shall cooperate with the Municipality’s Police Department and the Courts in the issuance of citations. Nestor shall submit mutually agreed information necessary to issue violation notices to the Police Department. All citations shall be reviewed and approved by the Municipality’s Police Department prior to mailing. In addition, Nestor will cooperate with the Courts to set up the

Ex. A-4
necessary communications and procedures that will enable Nestor to send delinquent notices to those registered owners/drivers for whom such notices are appropriate.

4.1.3. **Preparation of Evidence Packages.** Nestor shall prepare evidence packages in such form as may be reasonably agreed upon to enable the Municipality to enforce its citations in court.

4.2. **Access to Drivers License Information.** Unless the Washington Department of Licensing ("DMV") will not permit it, Nestor shall access directly the drivers license information and the registered owner residence address from the DMV, and the per-request fee for information, if any, shall be paid by the Municipality and shall be reimbursed to Nestor upon demand. If Nestor is unable to access such information, Nestor shall provide the make and license plate number of each violator to the Municipality, which will obtain and input the information into the System, or provide such information to Nestor, within a reasonable period of time.

4.3. **Numbering System.** Nestor, in coordination with the Courts, shall develop and implement an independent numbering system for automated red light citations.

4.4. **Transmission of Information.** Nestor shall download all citation information via an electronic file into the Court database. Nestor shall maintain a documented chain of custody for all electronically transmitted information while the information is under Nestor's control.

4.5. **Customer Service.** Nestor shall provide an automated customer service telephone number to the public. Customer Service Representatives will be available Monday through Friday, from 9:00 a.m. to 5:00 p.m. local time (of the Municipality), excluding holidays, in order to schedule violation video viewing appointments for the Police Department and to answer basic questions regarding the Municipality's program.

5. **Maintenance**

5.1. **Maintenance of System.** Except as provided herein, Nestor shall maintain the System (as such term is defined below); provided however, that Nestor shall not be responsible for any maintenance, repair or replacement required as a result of (i) the negligence or intentional act of the Municipality, its employees, agents or independent contractors (other than Nestor) and/or (ii) any equipment or software not provided by Nestor. Nestor shall maintain a maintenance log that documents all service issues. To "Maintain the System" shall mean to keep the System in such a state of operation such that the System's functionality and operation conforms in all material respects to the description of the System set forth in this Exhibit. All problems shall be documented and repairs commenced within twenty-four (24) hours of the time Nestor receives notice thereof. Nestor shall also install all software revisions for CrossingGuard Roadside and Citation Composer Software as and when developed and made commercially available by Nestor.

5.2. **Equipment Checks.** Nestor shall use commercially reasonable efforts to perform remote camera and PC equipment checks on a daily basis to confirm proper operation of

Ex. A-5
computers, cameras and communications network. Routine in-field camera equipment inspection will be done as needed. The System shall have the capability of on-line monitoring of all cameras at each intersection.

6. **Public Education Campaign**

6.1. **Public Awareness Program.** Nestor shall assist the Municipality with a Public Awareness Program. Such assistance shall consist of:

   a) Reasonable assistance for a media event to launch the community education program
   
   b) A reasonable amount of training for a Municipality staffed speaker’s bureau
   
   c) The production of warning signs (as described in section 5.2) for installation by Municipality
   
   d) Preparation of warning notices to violators for the first 30 days of the program
   
   e) A toll-free customer service hotline as described in section 3.5

7. **Expert Witness Testimony and Court Training**

7.1. **Expert Witness Testimony.** Nestor shall provide expert witness testimony, as reasonably necessary, to testify regarding the accuracy and technical operation of the System in up to two (2) court challenges to the operation of the System per year of the Term. For any such testimony required over the initial two challenges, the Municipality shall pay Nestor a fee for the time (including time spent for preparation, travel and attendance in Court) of such expert witness based upon Nestor’s then current hourly rate for such services (currently $175/hour), plus all reasonable out-of-pocket expenses.

7.2. **Court Training.** Nestor shall conduct a one-day workshop-orientation session for Municipal Court judges (and/or their designees), other appropriate court officials and the Municipality prosecutor.

8. **Provision of PC Equipment.** Nestor shall provide desktop workstations as reasonably necessary to accommodate citation volume, one (1) laptop workstation and one (1) printer (all of which shall remain the property of Nestor) to be used by the Municipality for citation review and approval, violation video viewing appointments and court hearings.

9. **Reporting**

9.1. **Weekly Report.** Nestor shall provide a weekly report to the Municipality’s Police Department and the Court during the Warning Period. The report shall include the number of violations recorded.

Ex. A-6
9.2. **Monthly Report.** Nestor shall submit to the Municipality a Monthly Report on project results within thirty (30) days of the end of each calendar month. To the extent reasonably commercially practical, the Monthly Report shall, if reasonably possible, include information for each violation recorded by the System as well as the following items:

a) Number of violations recorded  
b) Number of non-issued violations  
c) Breakdown of reasons for non-issuance  
d) Number of citations issued  
e) Court hearings scheduled and held  
f) Number of calls for information  
g) Number of violation video viewing appointments scheduled

9.3. **Additional Reports or Information.** Any other reports and information are not part of the Agreement and the preparation and delivery of any other such reports or information may result in additional fees.

9.4. **Database.** Nestor shall maintain a database with the following information per violation:

a) Location, date and time  
b) Number of seconds of yellow traffic signal or speed of vehicle  
c) Type of violation  
d) Vehicle description including license plate state and number  
e) Applicable vehicle code section violated (if available to Nestor)  
f) Citation prepared or reason for not preparing citation (if available to Nestor)  
g) Registered vehicle owner’s name and address, driver’s license number and related information required to prepare citations where violation is made by a driver other than registered owner (if available to Nestor) (Affidavit of Non-Liability)  
h) Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.) (if available to Nestor)
10. **Meetings**

Nestor representative(s) shall be made reasonably available to meet with the Police Department, and other representatives of the Municipality as determined by the Municipality, on a bi-weekly basis during program implementation and on a monthly basis once the program is fully operational. Subject to approval and agreement by both parties, telephonic or other acceptable means may be used to conduct such meetings.

11. **Additional Services (if requested by the Municipality in writing signed by the official who signed this Agreement or his/her successor in office):**

11.1. **Payment Processing Services** – Nestor shall use reasonable commercial efforts to receive citation fees from violators, deposit amounts collected into an appropriate bank account, provide accounting records to the Municipality, and remit the amounts received as instructed by the Municipality. The Ticket Processing Fee set forth in Section 4.1 of the System Agreement shall be increased by an amount equal to $_______ for each paid citation.

11.2. **CrossingGuard VIP Program** – Nestor will generate a video-based analysis of an intersection designed to evaluate the frequency of red-light violations for each approach at the targeted intersection. The video media will contain up to 16 hours of VIP monitoring assuming the equipment remains installed at the intersection during the course of monitoring, but not to exceed three consecutive calendar days. A report summarizing the results, along with the media generated will be provided to the Municipality. The VIP Program Fee is $850 for each intersection approach evaluated and includes 16 hours of evaluation. Additional 16-hour evaluation blocks may be ordered at 50% of the VIP Program Fee for each block, assuming equipment remains installed at the intersection between blocks. The VIP Program Fee for an intersection is due upon ordering the service. If the Municipality selects the intersection for a full CrossingGuard System installation within one month of delivery of the VIP report, Nestor will allow a credit equal to 100% of the intersection’s VIP Program Fee paid against the initial Ticket Processing Fees charged for the intersection.

To order a CrossingGuard VIP analysis, the Municipality should provide a written request for the analysis to Nestor, including a description of the intersection(s) selected, and a check for the ordered VIP Program Fee.

The VIP services for the first intersection approach identified in Section 1.1 of this Exhibit shall be performed by Nestor for no charge as part of the System.

11.3. **Collision Avoidance services and connections.**

11.4. **Intersection Video Monitoring Services** utilizing current fixed overview camera positions, (or dedicated camera subject to customer control at pricing TBD).
EXHIBIT B

LICENSE AGREEMENT FOR CROSSINGGUARD SOFTWARE

This License Agreement (the "License") is a legal agreement between you (the contracting counter-party in an agreement (the "Agreement") to which a copy of this License is attached as an Exhibit) and Nestor Traffic Systems, Inc. ("Nestor") for the Nestor software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (the "SOFTWARE PRODUCT"). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to you by Nestor. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to you under the terms of that license agreement. By execution of the Agreement, you have agreed to be bound by the terms of this License. Such agreement by you is an express condition to your ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants you only the following rights: You may use those copies of the SOFTWARE PRODUCT as installed by Nestor on your network ("Network"). A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different Networks.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer unless so installed by Nestor. You may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant you any rights in connection with any trademarks or service marks of Nestor. Without prejudice to any other rights, Nestor may terminate this License if you fail to comply with the terms and conditions of this License. In such event, you must permit Nestor reasonable access to your computer system for the purpose of removing all copies of the SOFTWARE PRODUCT or deliver to Nestor or destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. SUPPORT SERVICES AND UPGRADES. Nestor may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by the Agreement. Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information you provide to Nestor as part of the Support Services, Nestor may use such information for its business purposes, including for product support and development. In particular, Nestor will not utilize such technical information in a form that personally identifies you or any motor vehicle, tag or person. If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Nestor as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use
the resulting upgraded product only in accordance with the terms of this License. If the
SOFTWARE PRODUCT is an upgrade of a component of a package of software programs that
you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only
as part of that single product package and may not be separated for use on more than one
computer.

4. COPYRIGHT. All title and intellectual property rights in and to the
SOFTWARE PRODUCT (including but not limited to any images, photographs, animations,
video, audio, music, text, and “applets” incorporated into the SOFTWARE PRODUCT), the
accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by
Nestor or its suppliers. As between you and Nestor, all title and intellectual property rights in
and to the images and information which may be generated through use of the SOFTWARE
PRODUCT is your property. All rights not expressly granted are reserved by Nestor.

5. DUAL-MEDIA SOFTWARE. You may receive the SOFTWARE
PRODUCT in more than one medium. Regardless of the type or size of medium you receive,
you may use only one medium that is appropriate for your Network. You may not use or install
the other medium on another Network. You may not loan, rent, lease, lend or otherwise transfer
the other medium to another user.

6. BACKUP COPY. After installation of one copy of the SOFTWARE
PRODUCT pursuant to this License, you may keep the original media on which the
SOFTWARE PRODUCT was provided by Nestor solely for backup or archival purposes. If the
original media is required to use the SOFTWARE PRODUCT on the COMPUTER, you may
make one copy of the SOFTWARE PRODUCT solely for backup or archival purposes. Except
as expressly provided in this License, you may not otherwise make copies of the SOFTWARE
PRODUCT or the printed materials accompanying the SOFTWARE PRODUCT.

7. U.S. GOVERNMENT RESTRICTED RIGHTS. If you are acquiring the
SOFTWARE PRODUCT (including the related documentation) on behalf of any part of the
United States Government, the following provisions apply. The SOFTWARE PRODUCT and
documentation are provided with RESTRICTED RIGHTS. The SOFTWARE PRODUCT is
deemed to be “commercial software” and “commercial computer software documentation,”
respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use,
modification, reproduction, release, performance, display or disclosure of the SOFTWARE
PRODUCT (including the related documentation) by the U.S. Government or any of its agencies
shall be governed solely by the terms of this License and shall be prohibited except to the extent
expressly permitted by the terms of this License. Manufacturer is Nestor; its address is set forth
in the Agreement.

8. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. You
represent and agree that you do not intend to and will not use, disseminate or transfer in any way
the SOFTWARE PRODUCT in violation of any applicable law, rule or regulation of the United
States, or any State of the United States or any foreign country of applicable jurisdiction.
Without limiting the foregoing, you agree that you will not export or re-export the SOFTWARE
PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. You

Ex. B-2
specifically agree not to export or re-export the SOFTWARE PRODUCT: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any end-user who you know or have reason to know will utilize the SOFTWARE PRODUCT or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

9. OTHER PROVISIONS. Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.
EXHIBIT C

LEASE AGREEMENT FOR CROSSINGGUARD AND POLISCAN SYSTEMS

This Lease Agreement (the “Lease”) is part of an agreement (the “Agreement”) (to which a copy of this Lease is attached as an Exhibit) between the Municipality named in the Agreement and Nestor Traffic Systems, Inc. The Parties hereto agree as follows:

1. **LEASE.** Nestor hereby leases to Municipality and Municipality hereby leases from Nestor, subject to the terms and conditions of this Lease, the such items of System equipment (together with all attachments, replacements, parts, additions, substitutions, repairs, accessions and accessories incorporated therein and/or affixed thereto, the “Equipment”) that Municipality obtains possession, custody or control pursuant to the Agreement.

2. **USE AND LOCATION.** The Equipment shall be used and operated by Municipality only in connection with the operation of the System by qualified employees of Municipality and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. Municipality shall not part with control or possession of the Equipment without Nestor’s prior written consent.

3. **CONDITION.** Nestor shall maintain the Equipment in good condition and working order in accordance with Section 5.1 of Exhibit “A”. Municipality shall not damage the Equipment or make any alterations, additions or improvements to the Equipment without Nestor’s prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of the Equipment and are readily removable without causing material damage to such Equipment so as to return the Equipment to its original state, less ordinary wear and tear. Any alteration, addition or improvement not removed prior to the return of the Equipment shall without further action become the property of Nestor, provided, however, that any alterations, additions and improvements which would reduce the value of the Equipment must be removed prior to the return of such Equipment.

4. **RETURN.** Upon the expiration or earlier termination of the Agreement, Municipality shall allow Nestor reasonable access to remove the Equipment at Nestor’s expense.

5. **OWNERSHIP, LIENS.** The Equipment is and shall at all times be the property of Nestor. Municipality agrees to take all action necessary or reasonably requested by Nestor to ensure that the Equipment shall be and remain personal property. Nothing in this Lease, the Agreement or any Exhibit shall be construed as conveying to Municipality any interest in the Equipment other than its interest as a lessee hereunder. If at any time during the term hereof, Nestor wishes to place on the Equipment labels, plates or other markings evidencing ownership, security or other interest therein, Municipality shall allow Nestor reasonable access therefor and keep the same displayed on the Equipment. Municipality shall, at its expense, keep the Equipment free and clear of all liens, charges, claims and other encumbrances.

6. **NO MUNICIPALITY SUBLEASE; ASSIGNMENT.** MUNICIPALITY SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OR OTHERWISE RELINQUISH

Ex. C-1
7. **FINANCING STATEMENTS: FURTHER ASSURANCES.** Nestor and Municipality intend this transaction to be a leasing transaction only, but to the extent, at any time or from time to time, this Lease is construed to be a transaction intended as security, Nestor retains and Municipality hereby grants a security interest in all the Equipment, the proceeds of any sale, assignment, lease or sublease thereof, any insurance proceeds, and any other rights of Municipality in and to the Equipment, this Lease and/or their proceeds. Municipality, at the request of Nestor and at Municipality’s expense, agrees to execute and deliver to Nestor any financing statements, fixture filings or other instruments necessary for perfecting the interests and title of Nestor in the Equipment, and Municipality agrees that Nestor may, in Nestor’s sole discretion, file a copy of the Agreement, this Lease and any Exhibits in lieu of a financing statement. Municipality agrees, at Nestor’s expense, to promptly execute and deliver such further documents and take any and all other action reasonably requested by Nestor from time to time, for the purpose of fully effectuating the intent and purposes of this Lease, and to protect the interests of Nestor, its successors and permitted assignees.

8. **OTHER PROVISIONS.** Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.

Ex. C-2
City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form

<table>
<thead>
<tr>
<th>Department/Staff Contact: Planning / Steve Ladd</th>
<th>Council Meeting Date: May 9, 2006</th>
<th>Agenda Item Number: AB06-115</th>
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<tbody>
<tr>
<td>Ordinance Number: 1189</td>
<td>Resolution Number:</td>
<td>Councilmember Sponsor:</td>
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**BUDGET INFORMATION**

<table>
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<th>2006 Budget Amount</th>
<th>Required Expenditure</th>
<th>Impact</th>
<th>Remaining Balance</th>
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<td>$0</td>
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**Explanation:**

**Agenda Subject:**
Proposed revision of Critical Areas Ordinance regarding landslide hazards.

**Administrative Recommendation:**
Hear Planning Commission recommendation.

**Background Summary:**
See attached staff report and ordinance.

<table>
<thead>
<tr>
<th>Council Committee Dates:</th>
<th>Commission Dates:</th>
<th>Board/Hearing Examiner Dates:</th>
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<tbody>
<tr>
<td>Finance Committee:</td>
<td>Planning Commission: 2/15/06 public hearing</td>
<td>Park Board:</td>
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<tr>
<td>Public Safety Committee:</td>
<td>4/19/06 recommendation</td>
<td>Hearing Examiner:</td>
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<tr>
<td>Community Development &amp; Planning Committee:</td>
<td>Civil Service Commission:</td>
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<tr>
<td>Council Workshop:</td>
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</tr>
</tbody>
</table>

**Council Action:**
Council Call for Hearing: Council Hearings Date:
Council Referred Back to: Workshop: Committee
Council Tabled Until:      

**Signatures:**
Dept. Dir. [Signature] Mayor/City Administrator Date City Attorney reviewed
4/19/06 draft as recommended by Planning Commission
ORDINANCE NO. 1189

AN ORDINANCE OF THE CITY OF BONNEY LAKE,
WASHINGTON, AMENDING CHAPTERS 16.13, 16.28 AND 17.44
OF THE BONNEY LAKE MUNICIPAL CODE AND ORDINANCE
NOS. 766, 988, 1070 AND 1171, PERTAINING TO DEVELOPMENT
AND TREE REMOVAL ON STEEP SLOPES

WHEREAS, the City adopted a new critical area ordinance in 2004; and

WHEREAS, following review of best available science, the City has determined
that certain changes are needed to the critical area code to protect against landslide hazard
while avoiding unnecessary restrictions; and

WHEREAS, the City has determined that the proposal does not create a probable
significant adverse impact on the environment and that an Environmental Impact
Statement is not required under RCW 43.21C.030; and

WHEREAS, the Bonney Lake Planning Commission held a duly advertised
public hearing on this proposal on February 15, 2006 and subsequently recommended
adoption of this ordinance version; and

WHEREAS, the SEPA comment period and the state’s 60-day review period
have terminated; and

WHEREAS, these amendments are in the interest of the public health, safety, and
general welfare;

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

Section 1
BLMC 16.28.010 and the corresponding portion of Ordinance 1070 § 2 are hereby
revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

16.28.010 Designation
Areas susceptible to one or more of the following types of hazards are hereby designated
geo logically hazardous areas, in accordance with WAC 365-190-080(4)(a).
A. Erosion hazard areas are areas identified by the U.S. Department of Agriculture’s
Natural Resources Conservation Service as having a moderate-to-severe, severe, or
very severe rill and inter-rill (sheet wash) erosion hazard.
B. Landslide hazard areas are areas subject to landslides based on geology, soils,
topography, and hydrology. The following are indicators.
1. Areas delineated by the U.S. Department of Agriculture’s Natural Resources
Conservation Service as having a severe limitation for building site development;
2. Areas mapped by the Washington Department of Ecology (Coastal Zone Atlas) or
the Washington State Department of Natural Resources (slope stability mapping)
as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent
slides (URS or class 5);
3. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or
landslides on maps published by the U.S. Geological Survey or Washington State
Department of Natural Resources;
4. Areas where the following coincide: slopes steeper than fifteen percent, a
relatively permeable sediment overlying a relatively impermeable sediment or
bedrock, and ground water seepage;
5. Areas that have shown movement in the past ten thousand years or that are
underlain or covered by mass wastage debris of that time frame;
6. Slopes that are parallel or subparallel to planes of weakness (such as bedding
planes, joint systems, and fault planes) in subsurface materials;
7. Slopes steeper than eighty percent subject to rock fall during seismic shaking;
8. Areas potentially unstable because of rapid stream incision, stream bank erosion,
and undercutting by wave action;
9. Areas at risk from snow avalanches;
10. Canyons or active alluvial fans subject to debris flows or catastrophic flooding;
and
11. Slopes of forty thirty percent or steeper with a vertical relief of ten or more feet
except areas composed of consolidated rock and engineered constructed slopes for
which no land use change is proposed.

Section 2
BLMC 16.28.030 and the corresponding portion of Ordinance 1070 § 2 are hereby
revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

16.28.030 Exemptions.
In addition to those listed in BLMC 16.20.070, the following developments shall be
exempt from this chapter:
A. Buildings with less than 2,500 square feet of floor area which are not used as places of
residence, employment, or public assembly;
B. Additions of under 250 square feet to single story residences;
C. Fences
D. A. Other minor developments as determined by the director(s).
B. Sustainable selective-cut forest practices in which:
   1. The property is being managed according to a plan, approved by the City or the
      Washington Department of Natural Resources, to achieve and retain at least 75%
      tree canopy at all times;
   2. Logs are removed by methods that do not unduly damage the forest floor, such as
      by low-ground-pressure tracked machines; and
   3. City clearing permits and Washington Department of Natural Resources forest
      practice permits are obtained if required. See also BLMC 16.13.020 and
      16.13.080.
Section 3
BLMC 16.28.040 and the corresponding portion of Ordinance 1170 § 2 are hereby revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

16.28.040 Contents of critical area reports.
In addition to the requirements of BLMC 16.20.090, critical area reports for geologically hazardous areas shall include, where applicable:
   A. Site history regarding landslides, erosion, and prior grading;
   B. Topography in suitable contour intervals;
   C. Height of slope, slope gradient, slope stability, and slope retreat rate recognizing potential catastrophic events;
   D. Description of the geology (including faults), hydrology (including springs, seeps, and surface runoff features), soils (including, in seismic hazard areas, thickness of unconsolidated deposits and liquefaction potential), and vegetation;
   E. Type, extent, and severity of geologic hazard(s);
   F. Analysis of the proposal’s risk from geologic hazard and the proposal’s potential for exacerbating off-site hazards. Calculations of stability and bearing capacity shall explicitly assume a seismic event consistent with local geo-technical practice;
   G. Recommended buffers and other conditions of approval. In areas of erosion or landslide hazard, the recommended conditions may include:
      1. Clearing, fill, and hard-surfacing limits, slope stabilization measures, and vegetation management plan;
      2. Limitation on clearing during the rainy season, generally from October 1st to May 1st;
      3. Design parameters of foundations and retaining structures; and
      4. Drainage plan and erosion and sediment control plan in compliance with city stormwater management regulations; and
   H. Overview of field investigations, exploration logs, measurements, references, and past assessments of the site.

Section 4
BLMC 16.28.050 and the corresponding portion of Ordinance 1170 § 2 are hereby revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

16.28.050 Substantive requirements.
In addition to the substantive requirements of BLMC 16.20.130, the following requirements shall apply to geologic hazard areas:
   A. Proposed developments shall not increase Developments may occur in geologic hazard areas only to the extent supported by a valid critical area report without increasing the long-term risk of or exposure to geological hazard on-site or off-site.
   B. Hazard mitigation shall not rely on actions that require extensive maintenance.
   C. Development near an erosion or landslide hazard area shall:
      1. Observe a buffer from the edges thereof, of adequate width to comply with the substantive requirements;
2. Not decrease the factor of safety for landslides below the limits of 1.5 for static conditions and 1.21 for dynamic conditions. Analysis of dynamic conditions may be based on a minimum horizontal acceleration as established by the International Building Code;

3. Cluster structures and improvements as necessary to avoid hazard areas;

4. Use retaining walls that allow the retention of existing natural slopes where possible rather than graded artificial slopes;

5. Place utility lines and pipes in erosion and landslide hazard areas only when no other alternative is available and when the line or pipe can be installed above ground in such a manner as to remain intact without leaks in the event of a slide;

6. Discharge water from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area only if:
   a. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels; or
   b. Dispersed upslope of the steep slope onto a low-gradient undisturbed buffer of adequate infiltrate capacity without increasing saturation of the slope; and

7. Locate any on-site sewage drain fields outside the hazard area and related buffers.

D. If a geotechnical report contains specific recommendations to mitigate hazards, the geotechnical engineer shall monitor construction sufficiently to ensure compliance with said recommendations.

Section 5
BLMC 16.13.080 and the corresponding portion of Ordinance 1171 § 1 are hereby revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

16.13.080 Decision criteria on other undeveloped sites not proposed for development.
On undeveloped sites other than parks and designated open space tracts where no development is proposed or anticipated, non-conversion (replanting required) forest practice requirements as administered by the Department of Natural Resources shall apply. Forest management plans may be required. See also BLMC 16.13.020.J, 16.13.090, and 16.13.100. If the site is a critical area or critical area buffer see Ch. 16.20 BLMC.

Section 6
BLMC 17.44.010 and the corresponding portions of Ordinance 988 § 2 and Ordinance 766 § 2 are hereby revised as follows. Strikethroughs indicate deletions, underlines indicate new text.

17.44.010 Application.
Short plats shall be Type 2 or 3 permits – see Chapter 14.40 or 14.50 BLMC. The application form shall provide space for owner information, name and number of short subdivision, legal description of area to be subdivided, owner’s signature and date filed.
Eight prints of the proposed short plat shall be filed. The short plat map shall be drawn in ink to scale not smaller than one inch equals 100 feet on stable base mylar polyester film or equivalent approved material, a sheet size of 18 inches by 24 inches. The map shall include:

A. The boundary and dimensions of the original tract including its assessor’s parcel number, section, township and range, and all adjoining public or private roads and identifying names of such;

B. A vicinity map drawn to a scale of approximately four inches equals one mile of sufficient detail to orient the location of the original tract, showing surrounding streets, streams and major electrical transmission line easements;

C. The name and address of the owner of record of the original tract, scale of drawing and north directional arrow;

D. All proposed lots, identified by numerical designation, with dimensions and bearings;

E. The width and location of access to all lots;

F. The location and use of all buildings on the original tract;

G. The building setback lines for each lot;

H. The location of any wetlands and buffers, critical areas or water bodies, flood-prone areas, unstable soils or slopes exceeding 40 percent;

I. Space on the original or a second 18-inch-by-24-inch mylar sheet for conditions and signatures by appropriate city officials;

J. A survey as required by the Survey Record Act, Chapter 50 Washington Laws of 1973 or as amended.

Section 7
This ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five days as required by law.

PASSED by the City Council and approved by the Mayor this ___ day of __________, 2006.

_____________________________
Neil Johnson, Mayor

ATTEST:

________________________
Harwood Edvalson
City Clerk

APPROVED AS TO FORM:

________________________
James Dionne, City Attorney
Passed:
Valid:
Published:
Effective Date:
Chronology

- In November 2004 the City adopted a new Critical Areas Ordinance (CAO) prohibiting development in landslide hazard areas. The CAO lists 11 determinants of what constitutes a landslide hazard area, the most straight-forward being areas of 40% or greater slope. (Percentage of slope is rise divided by run, not to be confused with degrees of slope. A 100% slope equals a 45 degree slope.)
- In September 2005 the City rezoned most of the steep west-facing slopes to RC-5, allowing one residence per five acres.
- In October 2005 the City adopted a new Clearing and Landscaping Ordinance that, among other provisions, limited clearing of slopes of over 25%.
- In October 2005 the City Council’s Community Development Committee (CDC) initiated a proposal to lower the “40% or greater slope” determinant to 25%.
- On 11/1/05 the City Council concurred with the CDC suggestion and asked staff and Planning Commission to bring forward an ordinance.
- Staff drafted the first version of the proposed ordinance.
- Beginning in January, the Planning Commission discussed the proposal. Suggestions from the City Attorney and the Dept. of Community and Economic Development were incorporated. The ordinance progressed through second, third, and fourth versions.
- On 2/15/06 the Planning Commission held a public hearing and later recommended approval of the fourth version. This version still changed the 40% slope determinant to 25% slope.
- Prior to presenting its recommendation to the Council, the Planning Commission and staff received further information which led to the Planning Commission withdrawing its recommendation. A geo-technical engineering was retained to advise the City. The ordinance progressed through fifth, sixth, and seventh versions.
- On 4/19/06 the Commission recommended approval of the seventh version. See attached.

A little background on Critical Areas Ordinances (CAOs)
The state requires that all local governments adopt CAOs, and that they observe Best Available Science (BAS) in doing so. BAS is established by scientists through studies and peer review. Some studies are general, others are specific to certain sites. Critical areas include wetlands, aquifer recharge areas, floodplains, geologically hazardous areas, and habitat conservation areas (which include streams). The regulations apply to critical areas wherever they may be located in the City. Since exact location is rarely known in advance, the City requires that development applications include critical area reports whenever a site is likely to contain a critical area. The CAO preserves some critical areas because they are valuable in their own right. This includes wetlands, aquifer recharge areas, and habitat conservation areas. Others are important mainly in a
negative sense: development in such areas may fall victim to natural disasters. This is the case for floodplains and geologically hazardous areas.

**Why the recommended ordinance would not change the 40% slope determinant to 25%**

There was a sense among staff and Planning Commission members that some lands of between 25% and 40% slopes are safe and that it would be unfair to deprive landowners the use of their land. At first our response was to insert more exemptions allowing, for example, single-family residences in certain cases. Then we had a consultant prepare a map showing how much of the City-owned site across the Sumner-Buckley Highway from the 76 Station is over 25% slope. Enough of the site is over 25% slope that, if that were the rule, the site could not be developed. Yet the site does not appear to be dangerous. Slope is only one determinant of landslide hazard. Equally important are soils and hydrology. The soil is obviously gravelly and free of seeps and springs. This site is an example of an unknown number of sites in the City that would be wrongly rendered unbuildable by the proposed ordinance.

Staff and the and Planning Commission then went back to basics. We concluded that the “line in the sand” between what can and cannot be developed must be based on actual danger, not on an arbitrary slope cutoff. This led to a reanalysis of the 11 “landslide hazard indicators.”

**Should the 11 “landslide hazard indicators” be definitive or indicative?**

To draft the CAO in 2004, staff used *Sample Provisions for Designating and Protecting Critical Areas*, published in 2003 by the WA Dept. of Trade, Community, and Economic Development (CTED). Staff utilized almost verbatim the 11 landslide hazard indicators that appear under BLMC 16.28.010(B).

The *Sample Provisions for Designating and Protecting Critical Areas* introduce these indicators by saying, in effect, “The following MAY indicate landslide hazard area.” The wording was non-committal. However, the CAO the City ended up adopting says, basically, “The following ARE landslide hazard areas and cannot be developed.”

Staff now feels that it erred in deviating from the *Sample Provisions for Designating and Protecting Critical Areas* in this way. It is not possible to reduce to a few words all the situations that can be found in the real world. Only a geo-tech study, subjected to third-party review as necessary, can determine if a development proposal is or is not safe. The “landslide hazard indicators” should be indicative, not definitive.

**What is the correct percentage for the maximum slope indicator?**

The focus of attention has been indicator #11, “Slopes over 40% with a vertical relief of 10 feet or more.” The current proposal began with the Council proposing to change it to 25%.
First, staff and the Planning Commission researched what other jurisdictions stipulate. In Western Washington most jurisdictions use 40% because that is what the Sample Provisions for Designating and Protecting Critical Areas says. This includes Pierce County, Sumner, Seattle, Issaquah, etc.

In 2005, CTED published a Technical Guidance Document For Clearing and Grading In Western Washington, page 10 of which cautions against clearing and grading of slopes over 25%. Sumner and various jurisdictions on the east coast use 25%. A county in Virginia even uses 15%. However, the soil conditions are probably not comparable there.

Some jurisdictions have a range of slope categories and allow varying degrees of development for each range. The Planning Commission looked into this option but ultimately rejected it because it did not conform to Best Available Science (BAS); geo-technical scientists believe that only case-by-case studies can determine how intensely a site can be developed.

Staff gathered neutral advice from two geologic engineers that advise local governments on regulatory matters. Donald Tubbs is a well-respected engineering geologist based in Redmond. He helped develop the indicators in the State Sample Provisions for Designating and Protecting Critical Areas. He is familiar with Bonney Lake’s surface geology. Mr. Tubbs is not opposed to requiring geo-technical reports more often. However, he states that 25% slopes in our vicinity almost never slide, and that even 50% slopes are often stable if no seepage is present.

Dave Williams is a geologic scientist with Zipper Zeman Assoc. in Bellevue. Mr. Williams basically says the same as Mr. Tubbs. 25% would be too low as a hard-and-fast cut-off. Geo-tech reports should be relied on to determine if danger exists and what can be safely built with proper engineering and mitigation. Mr. Williams spoke at the Planning Commission meeting and can attend the Council meeting as well.

The consensus is that the 40% could be lowered to 30% if it is only an indicator. For sites over 30% slope, or that are characterized by any of the other ten indicators, a geo-technical report would be required.

**What are the proper exemptions?**

BLMC 16.28.030 lists developments that can be built even on geologically hazard areas: storage buildings with under 2,500 square feet, additions of under 250 square feet to single-family residences, etc. The early versions of new ordinance would have added more exemptions, to avoid regulatory takings. If our “landslide hazard indicators” are only indicative, those exemptions are no longer necessary. They are deleted from the final version recommended by the Planning Commission. Staff now feels it was incorrect to allow such exemptions in the first place. If a site is in fact dangerous, buildings and residences should not be allowed.
Sustainable yield forestry
Staff also looked into restricting logging on steep slopes. The proposed ordinance inserts an exemption for sustainable selective-cut forest practices. The idea is to maintain a tree canopy that, while not necessarily 100%, is sufficient for preventing landslides, erosion, and degradation of scenic views. The “sustainable yield forestry” exemption was not in the Sample Provisions for Designating and Protecting Critical Areas. Staff and the Planning Commission invented it.

Contents of critical area (geo-tech) reports
A critical area report pertaining to a landslide hazard area is called a geo-tech report. After talking with geo-technical engineer David Williams, it was decided to require several additional items of information in the geo-tech report.

Summary of what is in the new ordinance
The following table discusses the ordinance.

<table>
<thead>
<tr>
<th>BLMC section being revised</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.28.010.B</td>
<td>“The following are indicators” is inserted to make the 11 indicators indicative rather than definitive.</td>
</tr>
<tr>
<td>16.28.010.B.2</td>
<td>The Coastal Zone Atlas does not cover Bonney Lake, so it is deleted.</td>
</tr>
<tr>
<td>16.28.010.B.11</td>
<td>This indicator of hazard, one of 11 which trigger a geo-tech report, is changed from 40% to 30%.</td>
</tr>
<tr>
<td>16.28.030.A, B, and C</td>
<td>These exemptions are deleted since only verified hazard areas will be regulated, and little if any building should occur in such areas.</td>
</tr>
<tr>
<td>16.28.030.B (new)</td>
<td>This provision would allow sustainable selective-cut forestry.</td>
</tr>
<tr>
<td>16.28.040.F</td>
<td>On the advice of David Williams, this requires a seismic event assumption in the geo-tech report.</td>
</tr>
<tr>
<td>16.28.040.H</td>
<td>On the advice of David Williams, this requires exploration logs in the geo-tech report.</td>
</tr>
<tr>
<td>16.28.050.A</td>
<td>This clarifies that, in a landslide hazard area, development can only occur in conformance with an approved geo-tech report.</td>
</tr>
<tr>
<td>16.28.050.C.2</td>
<td>This is another minor amendment on the advice of David Williams.</td>
</tr>
<tr>
<td>16.28.050.D</td>
<td>This provision requires monitoring in certain instances.</td>
</tr>
<tr>
<td>16.13.080</td>
<td>This is a cross-reference in the Clearing and Landscaping Ordinance, reminding the reader that if the site is a critical area, the CAO applies.</td>
</tr>
<tr>
<td>17.44.010</td>
<td>This is a clarification and corresponding change in the short plat chapter of the BLMC.</td>
</tr>
</tbody>
</table>
How the code needs to be administered
With the proposed ordinance, more would depend on what the geo-tech study says. This raises important questions of when a study is required and how to determine if the study is reliable. The Director of Planning and Community Development is responsible for such decisions, though he may delegate the responsibility. Administration breaks down into three important phases:

1. Staff must determine when to require a geo-tech report. We would use the “11 indicators” as red flags, erring on the safe side. For the indicator in question, the proposed ordinance would lower the threshold in terms of slope from 40% to 30%.

2. Once the critical area report is received, if it proposes to develop the site, with or without mitigation, staff must determine whether to require third-party review.

3. Once third-party review is complete, this department would make its decision, probably by utilizing the findings of either the original report or the third-party review. This department’s decision is appealable.

Conclusion
What began as a quick fix has evolved into deeper thinking about how to manage the City’s steep slopes. Staff and the Commission recommend the attached draft ordinance.
City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form

<table>
<thead>
<tr>
<th>Department/Staff Contact: Planning / Steve Ladd</th>
<th>Council Meeting Date: May 9, 2006</th>
<th>Agenda Item Number: AB06-116</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance Number: 1190</td>
<td>Resolution Number:</td>
<td>Councilmember Sponsor:</td>
</tr>
</tbody>
</table>

**BUDGET INFORMATION**

<table>
<thead>
<tr>
<th>2006 Budget Amount</th>
<th>Required Expenditure</th>
<th>Impact</th>
<th>Remaining Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**Explanation:**

**Agenda Subject:**
Proposed ordinance to put the R-2 zone on a density basis rather than a minimum lot size basis.

**Administrative Recommendation:**
Hear Planning Commission recommendation.

**Background Summary:**
See attached staff report and ordinance.

<table>
<thead>
<tr>
<th>Council Committee Dates:</th>
<th>Commission Dates:</th>
<th>Board/Hearing Examiner Dates:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Committee:</td>
<td>Planning Commission:</td>
<td></td>
</tr>
<tr>
<td>Public Safety Committee:</td>
<td>4/5/06 public hearing</td>
<td></td>
</tr>
<tr>
<td>Community Development &amp; Planning Committee:</td>
<td>4/19/06 recommendation</td>
<td></td>
</tr>
<tr>
<td>Council Workshop:</td>
<td>Civil Service Commission:</td>
<td></td>
</tr>
</tbody>
</table>

**Council Action:**
Council Call for Hearing: Council Hearings Date:
Council Referred Back to: Workshop: Committee
Council Tabled Until:

**Signatures:**
Dept. Dir. [Signature]
Mayor/City Administrator
Date City Attorney reviewed
Date: 5/2/06
To: Mayor and Council
RE: Proposed ordinance to put the R-2 zone on a density basis rather than a minimum lot size basis, and fixing an unintentional wording regarding non-conforming lots

Chronology
- On 2/1/06 staff recommended that the Planning Commission initiate the subject code change.
- On 4/5/06 the Planning Commission held a public hearing.
- On 4/19/06 the Planning Commission recommended approval of this, the second version of the ordinance.

How the R-1 zone has already been revised
In 2004 the Growth Management Hearings Board ordered the City to allow at least four dwelling units per net acre in the R-1 zone. The City complied by means of Ordinance 1099, wherein the minimum lot size was removed. Instead, subdivisions of land in the R-1 zone must result in a density of four to five units per acre. Ordinance 1099 also:
- eliminated the need (in the R-1 zone but not in the R-2 zone) for the Planned Unit Development process by building in flexible regulations; and
- gave the City Council power to decide preliminary plats rather than the hearing examiner.

Disincentive for owner-occupancy in the R-2 zone
The R-2 zone has not yet been revised to match the R-1 zone. In R-2, the minimum lot size for single-family residences is 8,600 square feet, which equals 5.0 units per acre. The minimum lot size for duplexes is 10,000 square feet, which equals 8.712 units per acre. Thus, the R-2 zone encourages duplexes by allowing them to be built at a higher density. Placing two dwelling units on one lot means one or both of them must be rentals. The R-2 zone poses a disincentive for owner-occupancy. In the minds of some, this reduces overall property values because renters might have less stake in the community.

The solution is to put the R-2 zone on a density basis rather than a minimum lot size basis, as was done with the R-1 zone. This would remove the disincentive for owner-occupancy. In effect, it allows attached single-family residences (townhouses) on lots averaging 5,000 square feet in size. The proposed ordinance does not alter the number of units a developer can get. It just regulates density in a manner that encourages owner-occupancy.

By way of example, the City has recently approved the preliminary plat of Legacy Park by Bill Sweatman. The location is 70th St. E. near Meyer Road. The zoning is R-2. To maximize density,
Mr. Sweatman is creating ten duplex lots for a total of 20 units. They will probably be rental units forever unless the R-2 zone is changed to allow each unit to sit on its own lot with the property line running along the common wall. If the proposal is adopted, the developer says he would probably sell them as townhouses because they would be worth much more that way than as rentals.

Disincentive for clustering
In residential development, clustering allows the City to retain more trees and open space. Clustering is density-neutral. The same number of homes are built, but they are closer together, often attached. Each home sits on its own lot.

Prior to Ordinance 1099, clustering could be accomplished through the Planned Unit Development (PUD) process. Ordinance 1099 repealed the PUD process. This is OK in the R-1 zone, because Ordinance 1099 inserted other means of flexibility in R-1 for clustering (reduced dimensional requirements in certain circumstances and with special approvals). The R-2 zone has not yet been brought in line.

The proposed ordinance removes the disincentive for clustering by following the precedent of the R-1 zone in allowing flexibility in minimum lot width and minimum building setbacks if approved by the City Council.

Deletion of wording that has (unintentionally?) allowed duplexes on certain lots
The proposed ordinance also repairs a presumably unintentional wording regarding legal non-conforming lots. BLMC 18.02.100 is meant to state that lots which are substandard in size but which were legally created prior to zoning can be built on only if they are at least 7200 square feet. As worded, however, BLMC 18.02.100 has also allowed duplexes to be built on R-2 lots between 7,200 and 9,999 square feet in size, even though the R-2 zone requires 10,000 square feet for a duplex. On Inlet Island, and perhaps elsewhere, strict compliance with BLMC 18.02.100 has resulted in duplexes being built where the intent was probably to allow only a single-family residence.

The proposed fix clarifies that the “legal non-conforming lot” language is only meant to ensure that one single-family home can be built on the undersized lot. A duplex (or pair of townhouses) would not be allowed except within the maximum density limit. The fix also moves this clause to a better location in the BLMC.
Affect on inconsistency areas
Another reason this subject is important is because areas remain in which the Comprehensive Plan says R-2 but which are zoned R-1. In other words, despite last year’s rezones, some “inconsistency areas” still remain. Ideally, we should fix the R-2 zone before we receive any requests for rezone from R-1 to R-2.

There remain five areas in which the Comp Plan designation is R-2 and the zoning is R-1: Areas 10, 11, 21a, 21b, and 30. See the attached map. Most of these are already developed, so the matter isn’t so important, but Area 10 is undeveloped and buildable.

Summary of the proposed ordinance
The following table discusses the ordinance.

<table>
<thead>
<tr>
<th>BLMC section being revised</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.16.020</td>
<td>Both detached and attached single-family residences would be permitted. (The references to modular homes and manufactured homes are deleted because they are by definition single-family residences.)</td>
</tr>
<tr>
<td>18.16.040</td>
<td>Clustered lot (lots with reduced dimensional requirements) become conditional uses, approvable by the City Council.</td>
</tr>
<tr>
<td>18.16.050.A</td>
<td>The required density at the conclusion of any subdivision is 6.0 to 8.712 dwelling units per net acre for attached single-family residences and 4.0 to 5.0 dwelling units per net acre for detached single-family residences. This does not alter the current allowance.</td>
</tr>
<tr>
<td>18.16.050.B, C, E, G, and H</td>
<td>Minimum lot width and minimum setbacks are reduced, in some cases subject to City Council approval of a conditional use permit.</td>
</tr>
<tr>
<td>BLMC 18.02.100 and BLMC 18.38.100</td>
<td>Fixes (and moves) wording that has unintentionally allowed duplexes on certain lots</td>
</tr>
</tbody>
</table>

Conclusion
SEPA and all other procedures have been complied with. On 4/19/06 the Planning Commission recommended approval.
"Inconsistency Areas"
where the Comp Plan shows R-2
and the Zoning is R-1
4/19/06 draft as recommended by Planning Commission

ORDINANCE NO. 1190

AN ORDINANCE OF THE CITY OF BONNEY LAKE,
WASHINGTON, AMENDING CHAPTERS 18.02, 18.16, AND
18.38 OF THE BONNEY LAKE MUNICIPAL CODE AND
ORDINANCES 1137, 747, 746, 740, 1002, 1009, 786, AND 515
TO PUT THE R-2 ZONE ON A DENSITY BASIS RATHER
THAN A MINIMUM LOT SIZE BASIS

WHEREAS, the Bonney Lake Municipal Code encourages duplexes in the R-2 zone by
allowing them to be built at a higher density of dwelling units per acre than single-family
residences in the same zone, but this incentive only applies if both units are on one lot; and

WHEREAS, when two dwelling units are on one lot, usually one or both are not owner-
occupied; and

WHEREAS, this disincentive against owner-occupied units is disadvantageous to
property values because owner-residents have a long-term stake in the community; and

WHEREAS, this disadvantage is removed by putting the R-2 zone on a density basis
rather than a minimum lot size basis as was done with the R-1 zone in 2005; and

WHEREAS, this ordinance is neutral toward density allowances; and

WHEREAS, this ordinance also follows the precedent of the R-1 zone in allowing
flexibility in minimum lot width and minimum building setbacks if approved by the City
Council; and

WHEREAS, this ordinance also repairs an unintentional wording regarding legal non-
conforming lots, strict compliance with which has allowed duplexes to be built on R-2 lots under
10,000 square feet; and

WHEREAS, this amendment is consistent with the Bonney Lake Comprehensive Plan
and the laws of the State of Washington; and

WHEREAS, the City has determined that this proposal does not create a probable
significant adverse impact on the environment and that an Environmental Impact Statement is
not required; and

WHEREAS, the Bonney Lake Planning Commission held a duly advertised public
hearing to receive testimony on this proposal on April 5, 2006;

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

1
Section 1
BLMC 18.16.020 and the corresponding portions of Ordinances 1137 § 3, 747 § 1, 746 § 3, and 740 § 5 are hereby revised to read as follows. The strikethroughs mean deletions, the underlines mean new text.

18.16.020 Uses permitted outright.
The following uses are permitted in an R-2 zone, subject to the off-street parking requirements, bulk regulations and other provisions and exceptions set forth in this code:
A. Residential Uses.
   1. Single-family residences, detached or attached;
   2. Duplexes (two-family residences);
   3. Modular homes on individual lots;
   4. Manufactured homes on individual lots;
   §2. Accessory dwelling units.
B. Educational Uses.
   1. Elementary schools.
C. Cultural, Religious, Recreational, and Entertainment Uses.
   1. Parks, opens space and trails;
   2. Churches of less than 250 seats; provided the requirements of BLMC 18.22.040 are met.
D. Resource Management Uses.
   1. Agriculture and orchards;
   2. Forestry and tree farms;
   3. Raising of livestock, small animals and fowl; provided the requirements of BLMC 18.22.060 are met.
E. Transportation, Communication, Utilities.
   1. Public utility facility; provided the requirements of BLMC 18.22.050 are met;
   2. Wireless communications facilities are permitted as principal or accessory uses provided the requirements of Chapter 18.50 BLMC are met.

Section 2
BLMC 18.16.040 and the corresponding portions of Ordinances 740 § 5, and 1002 § 4 are hereby revised as follows. The strikethroughs mean deletions, the underlines mean new text.

18.16.040 Uses permitted conditionally.
The following conditional uses are permitted on a lot in this district:
   A. Educational Facilities.
      1. Junior high, high schools and junior colleges, public or private.
   B. Commercial Uses.
      1. Hospitals; provided the criteria in BLMC 18.22.040 are met.
   C. Cultural, Religious, Recreational and Entertainment Uses.
      1. Public and private meeting halls and lodge buildings; provided the criteria in BLMC 18.22.040 are met.
   D. Municipal Offices.
E. Lots with reduced dimensional requirements per BLMC 18.16.050(H) within subdivisions.

Section 3
BLMC 18.16.050 and the corresponding portions of Ordinances 1099 § 18 and 740 § 5, are hereby revised to read as follows. The strikethroughs mean deletions, the underlines mean new text.

18.16.050 Setback and bulk regulations.
The following bulk regulations shall apply to the uses permitted in the district subject to the provisions for yard projections included in BLMC 18.22.080:

A. Minimum Lot Areas Density.
   1. For a single-family residence, modular or manufactured home on a single lot: 8,600 square feet. Required density at the conclusion of any short plat or subdivision shall be 6.0 to 8.712 dwelling units per net acre for attached single-family residences and duplexes and 4.0 to 5.0 dwelling units per net acre for detached single-family residences.
   2. For a duplex residence: 10,000 square feet.

B. Minimum lot width: 55 feet. See also Subsection H of this section.

C. Minimum front setback: 20 feet from the right-of-way line, except State Highway 410 where the setback shall be 55 feet from the right-of-way line. 20 feet for garages, 10 feet for residences. See also Subsection H of this section. In areas where existing right-ofway is insufficient, additional setback may be required by the public works director as necessary.

D. Minimum side yard: five feet, with a total of 15 feet required for both side yards. Five feet (not applicable to property lines where single-family residences are attached).

E. Minimum Rear Setback shall be as follows. See also Subsection H of this section.
   1. Residence: 20 feet except 30 feet for residences on Lake Tapps;
   2. Separated garage or accessory building: 10 feet;
   3. Boathouse, if approved: no rear yard setback.

F. Maximum height: 35 feet above foundations.

G. Maximum lot coverage by impervious surfaces shall be 60 percent. See also Subsection H of this section.

H. In the case of new subdivisions that cluster residences and preserve open space, concurrent with subdivision approval the City may reduce the requirements in subsections B, C, E, and G of this section by up to 50% if indicated by application of the conditional use permit criteria (see BLMC 18.52.020.C). See the list of conditional uses at BLMC 18.16.040.

Section 4
BLMC 18.02.100 (shown here stricken through) and the corresponding portions of Ordinances 786 § 1, and 515 § 4 are hereby repealed.

18.02.100 Exemptions from certain provisions.
Any lot platted prior to March 8, 1967, the date of the initial Bonney Lake zoning ordinance, is exempt from the bulk square footage requirements and width requirements of this zoning code; provided, that such lot shall have not less than 7,200 square feet; and provided further, that such lot shall not have been subdivided.
Section 5
A new section, BLMC 18.38.100, is hereby added to read as follows (shown here underlined).

18.38.100 Legal non-conforming lots.
Any legal lot of record, platted prior to March 8, 1967, the date of the initial Bonney Lake zoning ordinance, is exempt from the minimum width, minimum lot size, and maximum density requirements of this zoning code for the purpose of one single-family residence; provided such lot has not less than 7,200 square feet and has not been further subdivided.

Section 6
If any portion of this ordinance shall be invalidated by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Section 7
This Ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five (5) days as required by law.

PASSED by the City Council and approved by the Mayor this ___ day of ______, 2006.

__________________________
Neil Johnson
Mayor

ATTEST:

__________________________
Woody Edvalson, Pro Tem City Clerk,

APPROVED AS TO FORM:

__________________________
James Dionne
City Attorney

Passed:
Valid:
Published:
Effective Date:

M:\Everyone\Planning\Bonney development regulations\2006
Call to Order:
Mayor Neil Johnson called the May 16th Council Workshop to order at 5:31 p.m.

Roll Call:
Also in attendance were Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Phil DeLeo, Councilmember Mark Hamilton, Councilmember Dave King, Councilmember Cheryle Noble and Councilmember Jim Rackley.

[Staff members attending were City Administrator Don Morrison, Public Works Director Dan Grigsby, Planning and Community Development Director Bob Leedy, Chief Financial Officer Beth Anne Wroe, Interim Police Chief Buster McGhee, City Attorney Jim Dionne, Administrative Services Director / City Clerk Harwood Edvalson and Planning Manager Steve Ladd.]

Agenda Items:

1. Presentation: Domestic Violence Program at Good Samaritan – Ardith DeRaad and Sylvia Riley.

Councilmember Noble introduced the two guests. She indicated that she will be giving her Council discretionary funds to support this program at Good Samaritan. She added that she hopes to personally raise $5,000 for the program. Ms. DeRaad, representing the Pierce County Commission Against Domestic Violence, referenced a news article in the Seattle Times on May 16th titled, “Studies find epidemic of domestic violence.” She discussed some of the current and long-term impacts of domestic violence. Sylvia Riley, the Program Director at Good Samaritan, reviewed statistics about domestic violence and the estimated impacts on the national and Puget Sound economies. She described the program at Good Samaritan.

Councilmember Rackley asked how the program is funded. Ms. Riley responded that most of the funding comes from the United Way. She said the City of Tacoma has also contributed, and matching funds have come from the Health Department. She noted that Bonney Lake and Fife are no longer making contributions as they have in the past. Councilmember Hamilton asked if there is any statistical correlation regarding those who have received counseling and are exposed to greater violence. Ms. Riley replied there is a 75% increase in the risk of homicide when a victim leaves a situation of domestic violence. Councilmember DeLeo asked what the Council can do about domestic violence. Ms. Riley responded that financial support of the program would be wonderful. But more importantly she urged help in raising awareness, and of encouraging a community of zero tolerance for domestic violence behavior. Mayor Johnson urged Ms. DeRaad to submit a formal request for funding to City Administrator Morrison.

2. Presentation: WSU Demonstration Forest – Forest Conditions and Future – Representatives of WSU, Washington Department of Natural Resources and Consultants.
Director Leedy said as soon as the City became aware of major activity planned in the Demonstration Forest, Planning Manager Ladd was tasked with contacting the key individuals in the proposed activities. Planning Manager Ladd introduced the following: Mel Taylor and Peter Volk – WSU Real Estate; Pat Boyes and Vicky McCarley – 4-H Program; Ken Russell – tree pathologist; Terry Meisenheimer, Jerry Johnson and Lisa Spahr from the Department of Natural Resources – Enumclaw Office; Dennis Tompkins – City Arborist; Wally Costello and Allison Moss – Quadrant. He thanked them all for coming and invited them to address the Council.

Mr. Taylor, Executive Director of Real Estate Operations and External Affairs for the Business Affairs Office at Washington State University, said the decision was made two years ago to sell the forest and use the proceeds to expand the 4-H Program and other projects identified by the University. He referenced a new plan from Quadrant for use of the property, and added that the University is excited about the plan. He said the University has determined that it will no longer use the Demonstration Forest for its programs. He explained that the forest will remain closed until such time it is sold and developed. He spoke in support of an agreement between the City and Quadrant for implementation of the latest plan.

Councilmember Hamilton asked about the removal of diseased trees from the property. Mr. Taylor confirmed that there is a plan to remove about 900 trees from the property, but said there is no plan to replant. Councilmember Noble asked about the other projects the sale of the property will fund for the University. Mr. Taylor said the proceeds will be used to fund 3 new challenge courses. He added the remainder will go into an endowment fund where its uses will be determined by the University President and the Board of Regents.

Deputy Mayor Swatman observed there are many uses the property can be used for within its current Public Facilities zoning. Mr. Taylor said the University has partnered with Quadrant and Weyerhaeuser to determine the use of the property. Deputy Mayor Swatman responded that the Council wants a plan that’s acceptable to the public. Councilmember King asked how much money will be earned from the logging of the downed and diseased trees. A response was given from the audience of approximately $400,000. Councilmember King asked about the University’s plan for securing the property from criminal action if it intends to close the forest and have no further programmatic presence there. Mr. Taylor said the University will be happy to work with the Police Department to provide access. He said for liability reasons, the University will likely have to develop their own security plan. Councilmember King observed that the City of Bonney Lake is unlikely to provide a gratis security program with the forest no longer open to public use.

Councilmember DeLeo asked where other challenge courses will be located. Pat Boyes responded that a few locations are being explored with the City of Tacoma, Pierce College and other park districts and junior colleges in Thurston County. She explained that the challenge course in the demonstration forest has trees which are in a diseased condition.

Responding to further questions about the health of the forest, Tree Pathologist Ken Russell, explained that the laminated root rot is the scourge of Douglas Fir forests. He said this is not the first time he has seen such an infestation. He observed that the root rot has probably been present in the forest for 40 years. He said once a tree has the symptoms of the root rot, there is no known way of saving the tree. He said the fungus is particularly virulent and can remain dormant in the soil for 75 years. He concluded that the proper harvesting and preventive clearing of the infected areas will still leave a fine forest. He suggested the replanting of cleared areas with other species of trees. He said the clearing of diseased trees will not completely solve the problem. He added
that continued checking will be required in the years to come.

There were additional questions and answers of the various representatives. Terry Meisenheimer of the Department of Natural Resources explained that under the current permitting system, the City is the lead agency on the review of the proposed activity within the forest. Pat Boyes recognized Vicki McCarley and Brian Grant for their valiant efforts to protect young people who were using the challenge course when the last windstorm struck the forest. Dennis Tompkins noted there is root rot in some of the Douglas Firs in front of City Hall and recommended removal of the diseased trees. He added his hope that Quadrant will preserve the healthiest parts of the Demonstration Forest.

Responding to Councilmember Rackley’s request, Mayor Johnson called for a ten minute break. The break started at 7:10 p.m. and concluded at 7:24 p.m.

3. Executive Session

**Deputy Mayor SWATMAN moved that the Meeting Agenda be modified to insert an executive session at this time to discuss potential litigation. Councilmember Noble seconded the motion.**

Motion approved 7 – 0.

Pursuant to RCW 42.30.110(i), Mayor Johnson declared the start of the executive session to discuss potential litigation. He said the session would last 15 minutes. It started at 7:25 p.m. At 7:40 p.m., the session was extended five minutes. The executive session adjourned at 7:48 p.m.


Director Grigsby introduced Andy Mortensen of the Transpo Group. Mr. Mortensen apologized for missing the last scheduled discussion of this topic. He discussed with the Council projected pictures of sidewalks and streetscapes in Seattle known as the Sea Streets Program. Mr. Mortensen explained how the projects incorporated traffic calming techniques and bio-filtered swales to treat storm water runoff. He responded to Council questions. Due to the high anticipated costs and technical difficulties of pursuing a streetscape similar to Seattle’s demonstration sections, Mr. Mortensen recommended the City use its existing standard street design standards for its sidewalk and street improvement projects. He said the final draft plan will discuss funding options and provide two or three options to treat the different situations which will be encountered on Bonney Lake’s streets. He added it will also include the ranking matrix used to establish a priority of projects. Mr. Mortensen said the specific design will be handled on a case-by-case basis as the City begins to address plan specific projects.

Councilmember Rackley informed the Council of a personal commitment that required his presence at 9:00 p.m., and left the meeting.


**Planned Absences.** Councilmember King informed the Council of his planned absences. He said he will be out of town for the May 23rd Council meeting due to his employment. He added he will be out of town for the meeting of June 27th on family matters. Finally, he said he will not be in attendance at the Thursday, May 18th Special Council Meeting because it conflicts with the Pierce County Regional Council meeting, which he will be attending as the City’s representative.
Informational Breakfast - July. Councilmember DeLeo asked if the Council would like to plan another community informational breakfast similar to the one held the past two years. There was a majority consensus to hold such a breakfast during the month of July. The location was discussed. Councilmember DeLeo suggested the fire station bays. Councilmember Hamilton suggested the high school.

Fifth Tuesday Meeting. Deputy Mayor Swatman asked the Council if they would like to use the upcoming fifth Tuesday, May 30th as an opportunity for a joint meeting with the Planning Commission. He asked Planning Commissioner Jacobsen in the audience if she was aware of any business over which the two groups should meet. She responded that the Commission’s current business is the review of the proposed Comprehensive Plan Amendments related to utilities.

Proposal to Reschedule and/or Cancel Meetings. Deputy Mayor Swatman noted that the regular workshop scheduled for July 4th falls on the Independence Day Holiday. He asked if the Council would support rescheduling that meeting to Saturday, July 8th, to follow the planned special meeting for emergency management training. He asked as well if the Council would like to cancel the August 1st workshop to allow participation in the National Night Out observances. Deputy Mayor Swatman also proposed that venue for the June 13th, or a following Council meeting be changed to the Bonney Lake High School to allow for displays of planned projects in the area. There was general Council consensus in support of the proposed changes. Councilmember DeLeo said the Public Safety Committee has finalized its proposed limited-parking ordinance for the high school area. He observed it would be a good discussion point for that meeting with the residents in the high school area in attendance.

Selection of Police Cars. Deputy Mayor Swatman asked if the Public Safety Committee intended to discuss the type of police cars purchased by the administration. He expressed concern that the most recent purchases of Dodge Chargers may be giving the public an impression of extravagance. Interim Chief McGehee noted the City’s traditional vehicle, the Ford Crown Victoria, will be discontinued next year. He added that the Chargers were purchased through the state bid. He said the department may have been required to wait several months or into 2007 to obtain vehicles had the City not purchased what it did. Chief McGehee said that although the Charger is five to seven hundred dollars more than the Crown Victoria, it is a better police car and gets better gas mileage. Councilmembers discussed the issue. Mayor Johnson said he feels the decision was appropriately justified by Chief McGehee. He said the Police Chief will provide additional information to the City Council.

5. Review of Minutes from April 27th Special Council Meeting, April 29th Special Council Meeting, May 2nd City Council Workshop and May 9th City Council Meeting.

There were no corrections requested by Councilmembers.

6. Adjournment

At 9:20 p.m., Deputy Mayor Swatman moved to adjourn the meeting. Councilmember Noble seconded the motion.

Motion approved 6 – 0.
Documents submitted for/at the Council Workshop of May 2, 2006:

- Good Samaritan Domestic Violence Program – News Article: Studies find epidemic of domestic violence – Ardith DeRaad, Pierce County Commission Against Domestic Violence.
- City of Bonney Lake – Domestic Violence Statistics – Cheryle Noble, Councilmember.
- The Transpo Group, Alternative Street & Sidewalk Design, Andy Mortensen, Project Engineer.
- City of Bonney Lake, Department Reports for May 16th Council Workshop –
  o Woody Edvalson, Administrative Services Director
  o Dan Grigsby, Public Works Director
  o Gary Leaf, Community Services Director
  o Bob Leedy, Director of Planning and Community Development
  o Buster McGeehe, Police Chief
CITY COUNCIL
SPECIAL MEETING

City of

**BONNEY Lake**

The City of Bonney Lake's Mission is to protect the community's livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.

May 17, 2006
6:30 p.m.

DRAFT MINUTES

"Where Dreams Can Soar"

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**Location:** Bonney Lake City Hall – 19306 Bonney Lake Boulevard.

**Elected Officials in attendance:** Mayor Neil Johnson, Deputy Mayor Swatman, Councilmember David Bowen, Councilmember Phil DeLeo, Councilmember Mark Hamilton, Councilmember Dave King and Councilmember Jim Rackley. Councilmember Cheryle Noble was absent.

[Staff in Attendance: Public Works Director Dan Grigsby, Assistant City Engineer Doug Budzynski.]

**Agenda Items:**

1. **Open House:** This was an informational open house about a proposed Utilities Local Improvement District for the Eastown area of Bonney Lake conducted by administrative staff. No formal meeting agenda was followed. During the evening, an informal petition of support was submitted to City Officials. There was no Council action taken at this meeting.

2. **Adjournment:** By common consent, the Council adjourned the special meeting at approximately 9:00 p.m.

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Harwood T. Edvalson, CMC
City Clerk

Neil Johnson, Mayor
Location: Public Safety Building Training Room, 18421 Old Sumner Buckley Highway, Bonney Lake

Elected Officials in attendance: Mayor Neil Johnson, Deputy Mayor Swatman, Councilmember Phil DeLeo, Councilmember Mark Hamilton, Councilmember Cheryle Noble and Councilmember Jim Rackley. Councilmembers David Bowen and Dave King were absent.

[Staff in Attendance: City Administrator Don Morrison, Community Services Director Gary Leaf, Planning and Community Development Director Bob Leedy and Interim Police Chief “Buster” McGeehee.]

Agenda Items:

1. Community Group Meeting: This was a meeting of the Bonney Lake Livable City Community Group. It was advertised as a public meeting because it was anticipated that a quorum of the City Council would be in attendance. While individual Councilmembers participated in the discussion at this meeting, no formal Council action was taken.

2. Adjournment: This Community Group meeting concluded at approximately 9:00 p.m.
SPECIAL CITY COUNCIL
MEETING
June 1, 2006
5:00 P.M.

DRAFT MINUTES

City of Bonney Lake
"Where Dreams Can Soar"

I. CALL TO ORDER – Mayor Neil Johnson called the meeting to order at 5:03 p.m.

A. Roll Call [A1:3]

City Clerk Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Mark Hamilton, Councilmember Dave King and Councilmember Jim Rackley. Councilmembers Phil DeLeo and Cheryl Noble arrived shortly after the start of the executive session.

Staff members present were City Administrator Don Morrison, Public Works Director Dan Grigsby, Planning and Community Development Director Bob Leedy, City Attorney Jim Dionne, Assistant City Attorney Kathleen Haggard and Administrative Services Director / City Clerk Harwood Edvalson.

II. EXECUTIVE SESSION:

Pursuant to RCW 42.30.110(1)(i), Mayor Johnson announced the City Council will meet in executive session to discuss potential litigation for a period of 15 minutes. The session started at 5:04 p.m. At 5:20 p.m., a ten-minute extension to the session was announced. At 5:27 p.m., the Council reconvened the special meeting.

III. FULL COUNCIL ISSUES:


Councilmember Rackley moved to approve Resolution 1583. Councilmember DeLeo seconded the motion.

Deputy Mayor Swatman said it is his understanding that through this agreement, Cascadia will pay for all of the City’s out-of-pocket expenses for the South Prairie Road Improvement Project. He expressed appreciation for Cascadia being a good neighbor and living up to its obligations to mitigate the impacts of its development. Mayor Johnson thanked the City staff and City Attorneys for their successful pursuit of these negotiations. Councilmember King noted that South Prairie Road has been a problem for years, and continues to be a growing problem. He expressed
appreciation that the City was able to negotiate with Cascadia to get this project moving forward. He thanked all the citizens who spoke to legislators about a resolution to the traffic at SR410 and South Prairie Road. He added he looks forward to the City continuing to work with Cascadia and the City’s other neighbors to deal with the congestion problems in the area. Councilmember Hamilton recognized the good neighbor policy of Cascadia as demonstrated through the current efforts of Patrick Kuo and Chuck Lappenbush. He noted the employment generated by this new community will be a benefit to Cascadia and Bonney Lake. Councilmember Noble extended congratulations to both City and Cascadia staff for the successful negotiations.

Motion approved 7 – 0.

B. AB06-118 – Resolution 1577 - A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Advise Pierce County That An Agreement Has Been Reached With A Private Developer To Fund The City’s Portion Of The South Prairie Road Improvements Project And To Request That Pierce County Proceed With Award Of Contract To The Low Bidder.

Councilmember Rackley moved to approve Resolution 1577. Councilmember DeLeo seconded the motion.

Mayor Johnson noted the contractor had agreed to extend the terms of the bid through tomorrow. He said this is what necessitated the special meeting and action this evening.

Motion approved 7 – 0.

IV. ADJOURNMENT

At 5:32 p.m., Deputy Mayor Swatman moved to adjourn the meeting. Councilmember Noble seconded the motion.

Motion approved 7 – 0.

Harwood T. Edvalson, CMC
City Clerk

Mayor Neil Johnson, Jr.

Documents submitted for or at the Council Meeting of June 1, 2006:

➢ City of Bonney Lake – Cascadia traffic related issues for South Prairie Road Project – Dan Grigsby, Public Works Director.
CALL TO ORDER – Mayor Neil Johnson called the meeting to order at 7:05 p.m.

A. Flag Salute - Mayor Johnson led the audience in the Pledge of Allegiance.

B. Roll Call [A1.3]

City Clerk Edvalson called the roll. In addition to Mayor Johnson, elected officials attending were Deputy Mayor Dan Swaiman, Councilmember David Bowen, Councilmember Phil DeLeo, Councilmember Mark Hamilton and Councilmember Jim Rackley. Councilmember Cheryle Noble arrived after the start of the meeting. She later noted her tardiness was due to her involvement in the Downtown Economic analysis consultant interviews. Councilmember Dave King was absent.

Staff members present were City Administrator Don Morrison, Community Services Director Gary Leaf, Interim Police Chief ‘Buster’ McGehee, Judge James Helbling, City Attorney Jim Dionne, Administrative Services Director / City Clerk Harwood Edvalson, Planning Manager Steve Ladd and City Engineer John Woodcock.

Councilmember Rackley moved to excuse Councilmember King from the Council meeting. Councilmember DeLeo seconded the motion.

Motion approved 5 – 0.

C. Announcements, Appointments and Presentations [A3.6.9]

1. Announcements:
   a. Councilmember Hamilton thanked City Administrator Morrison for his work on a $10,000 grant which was recently received from the Department of Natural Resources in support of the City’s urban forestry management plan.

2. Appointments: None.

3. Presentations: None.

D. Agenda Modifications: None.
II. PUBLIC HEARINGS, CITIZEN COMMENTS & CORRESPONDENCE


B. Citizen Comments:

Thomas White, 20610 La Paloma Dr., addressed the Council regarding the WSU Demonstration Forest. He recommended that no more permits be issued for development on this property. He commented on the changes he has seen in the City during his 18 years of residency. He urged the forest be cleaned up for public use, and the Council look to the City's mission statement for guidance in dealing with the proposed development of the forest.

C. Correspondence: None.

III. COUNCIL COMMITTEE REPORTS:

[A3.6.4]

A. Finance Committee

Deputy Mayor Swatman said the Finance Committee met earlier in the evening and discussed the following:

1. Resolution 1561 – a preventive maintenance agreement for the Public Safety Building;
2. Resolutions 1580 & 1581 – approving two IAC grant applications;
3. A cellular antenna site license name change from AT&T to Cingular;
4. A proposal from DM Disposal for a 3% adjustment to the refuse rates for fuel costs;
5. Refunding utilities revenue bonds;
6. The need for appropriate impact fee reports.

Deputy Mayor Swatman asked Councilmember DeLeo to address the use of surplus vehicles in support of domestic violence programs. Councilmember DeLeo said that the domestic violence agency is working through the Auburn Prosecutor’s Office. He observed there is a state statute allowing the transfer of vehicles and other equipment from one governmental entity to another. He suggested the transfer of some of the surplus vehicles to Auburn might be used as a mechanism to get those vehicles to the domestic violence agencies.

B. Community Development Committee

Councilmember Rackley said the Community Development Committee met on May 15th. He said the following items were discussed and moved forward for Council consideration:

1. Equipment purchases;
2. The South Prairie Road Improvement;
3. Resolution 1578 – the Tacoma Point Water Main Replacement Project; and
4. AB06-120 – accepting the completion of the limb and storm debris grinding.
C. Public Safety Committee
Councilmember DeLeo said the Public Safety Committee has not met since the last Council meeting.

D. Other Reports:

Deputy Mayor Swatman expressed appreciation to all those who had a hand in assisting with the rezone ordinance appeal recently heard before the Growth Management Hearings Board. He added it is not very often the City receives such a favorable ruling from this Board. He acknowledged that preparing for such hearings is a resource-intensive effort. He cautioned that proposed Initiative 933 could impact the City by rolling back zoning to its state in 1997. Councilmember Rackley apologized for voting against this ordinance when it was before the Council. He noted since its adoption he has been supportive of the ordinance and the City’s efforts to defend it.

IV. CONSENT AGENDA: [A3.6]

Councilmember DeLeo asked that Item F be pulled from the Consent Agenda. Councilmember Rackley moved to approve the Consent Agenda as modified. Deputy Mayor Swatman seconded the motion.

A. Approval of Meeting Minutes: April 27th Special Council Meeting and April 29th Special Council Meeting; May 2nd Council Workshop and May 9th Council Meeting.

B. Checks/Vouchers: Accounts payable checks/voucher #43877 thru #44000 and wire transfer #19537577 in the amount of $825,305.84. [F4.9]

C. Payroll: May 1st-15th, 2006 for checks 24949-24938, including Deposits and Electronic Transfers in the amount of $270,206.09, [F4.9]

D. AB06-109 – Resolution 1572 – A Resolution Of The City Of Bonney Lake, Pierce County, Washington, Designating The City Clerk As The Public Records Officer. [A4.3.3]

E. AB06-119 – Resolution 1578 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing An Agreement For The Tacoma Point Water Main Replacement Project To Kar-Vel Construction. [O4.10.2]

F. AB06-120 – A Motion Of The City Council Of The City Of Bonney Lake, Accepting The Completion Of The Limb And Storm Debris Grinding Project Performed By West Coast Stump Grinding, Inc. [A3.6.10][O4.14.1]

G. AB06-127 – A Motion Of The City Council Of The City Of Bonney Lake, changing the regular meeting venue for the June 27th Council meeting to the Bonney Lake High School Commons, Rescheduling the regular July 4th Council workshop to Noon on July 8th at the Public Safety Building Training Room and calling a special Council
meeting for emergency preparedness discussions and training from 9:00 a.m. to Noon on July 8th at the Public Safety Building Training Room. [A1.1.2][A3.6.10]

Motion approved 6 – 0.

V. FINANCE COMMITTEE ISSUES:

A. AB06-93 – Resolution 1561 - A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing A Maintenance Contract With Liebert Global Services For Maintaining The Battery Backup System At The Public Safety Building. [O4.4.3]

Councilmember Rackley moved to approve Resolution 1561. Deputy Mayor Swatman seconded the motion.

Motion to table approved 6 – 0.

B. AB06-124 – Resolution 1580 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing An Application For Funding Assistance For A Washington Wildlife And Recreation Program (WWRP) Project (Fennel Creek Trail) To The Interagency Committee For Outdoor Recreation (IAC) As Provided In Chapter 79A.15 RCW, Acquisition Of Habitat Conservation And Outdoor Recreation Lands. [F5.2.13]

Councilmember Noble moved to approve Resolution 1580. Councilmember DeLeo seconded the motion.

Community Services Director Leaf said he believes this application for a grant to assist with the Fennel Creek Trail is the stronger of the two applications for grant consideration. Councilmember Rackley emphasized that this grant and the following one are for money to pursue parks-related projects. Mayor Johnson added an emphasis is being made with staff to pursue more grant opportunities.

Motion approved 6 – 0.

C. AB06-125 – Resolution 1581 – A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing An Application For Funding Assistance For A Washington Wildlife And Recreation Program (WWRP) Project (Allan Yorke Park Sports Field) To The Interagency Committee For Outdoor Recreation (IAC) As Provided In Chapter 79A.15 RCW, Acquisition Of Habitat Conservation And Outdoor Recreation Lands. [F5.2.13]

Councilmember Rackley moved to approve Resolution 1581. Councilmember Noble seconded the motion.
Motion approved 6 – 0.

VI. COMMUNITY DEVELOPMENT COMMITTEE ISSUES: None.

VII. PUBLIC SAFETY COMMITTEE ISSUES: None.

VIII. FULL COUNCIL ISSUES:

AF. **AB06-120** – A Motion Of The City Council Of The City Of Bonney Lake, Accepting The Completion Of The Limb And Storm Debris Grinding Project Performed By West Coast Stump Grinding, Inc. {A3.6.10][O4.14.1]

Councilmember Rackley moved to accept the completion of work on the Limb and Storm Debris Grinding Project.

Councilmember DeLeo noted that the windstorm hit in February while the Council was at a retreat in Olympia. He said he was impressed upon his return the next day to see signs for debris collection had already been posted. He said the City Departments did a commendable job to assist with storm cleanup. While none of the staff in attendance had specifics on the amount of debris collected, Mayor Johnson noted the chipped material is available for free to the public.

Motion approved 6 – 0.

IX. EXECUTIVE SESSION: None.

X. ADJOURNMENT

At 7:21 p.m., Councilmember Noble moved to adjourn the meeting. Deputy Mayor Swatman seconded the motion.

Motion approved 6 – 0.
City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form

Department/Staff Contact: Admin Srvc/Edvalson

Council/Wrkshp Mtg Date: June 6, 2006

Ordinance Number: D06-128

Resolution Number:

Agenda Bill Number: AB06-128

Councilmember Sponsor: DeLeo

BUDGET INFORMATION

2006 Budget Amount

Required Expenditure

Impact

Remaining Balance

Explaination

There will be a budget impact for the manufacture and installation of signs. An estimate for this cost has yet to be developed.

Agenda Subject: Discussion regarding a proposed ordinance restricting parking within walking distance of the Bonney Lake High School.

Administrative Recommendation: Discuss and schedule for Council action at the June 27th Council meeting which will be held at Bonney Lake High School.

Background Summary:

The Public Safety Committee has been working on an ordinance to limit parking in residential areas near Bonney Lake High School. It is anticipated the number of school-related vehicles will continue to increase over the next few years increasing the impact to the residential neighborhoods near the high school. The proposed ordinance provides that parking will be by permit only on the streets designated within the ordinance. It further authorizes the City to develop criteria for determining who will be eligible for a parking permit in the restricted area.

Council Committee Dates:

Finance Committee:

Public Safety Committee:

Community Development & Planning Committee:

Council Workshops: 06.06.06

Commission Dates:

Planning Commission:

Civil Service Commission:

Board/Hearing Examiner Dates:

Park Board:

Hearing Examiner:

Council Action:

Council Call for Hearing:

Council Hearings Date:

Council Referred Back to:

Workshop:

Committee:

Council Tabled Until:

Council Meeting Dates:

Signatures:

Dir. Authorization	Mayor	Date City Attorney Reviewed:
ORDINANCE NO. D06-128

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE
ESTABLISHING RESTRICTED PARKING AREAS AND ADDING A NEW
CHAPTER 10.36 TO THE BONNEY LAKE MUNICIPAL CODE.

WHEREAS, maintaining convenient parking for Bonney Lake residents and their
visitors is vital to sustain livability and traffic flow; and

WHEREAS, the streets around Bonney Lake High School are expected to become
clogged with student cars when school is in session, such that residents are hindered from
accessing their properties; and

WHEREAS, the City Council finds that it is in the public interest to establish a
restricted parking area within walking distance of the Bonney Lake High School;

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

Section 1. A new Chapter 10.36, entitled Restricted Parking Areas, is added to the
Bonney Lake Municipal Code to read as follows:

10.36.010 Designation and posting of restricted parking zones

Restricted parking zones established pursuant to this chapter shall be posted with
parking signs specifying the applicable parking restriction, as well as the time of day, and
days of the week of such restrictions. Parking sign design and placement shall conform
to urban parking signs and placement per the Manual on Uniform Traffic Control
Devices.

No person shall park a vehicle in violation of posted or marked restrictions, or
without a City-issued permit or other authorization where and when such permit or
authorization is required.
10.36.020  Restricted parking zone established around Bonney Lake High School

Parking without a City-issued permit is prohibited in the following zones:

**Streets Within City Limits**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>East and west side of 200&lt;sup&gt;th&lt;/sup&gt; Ave Ct from South Prairie Road to 104&lt;sup&gt;th&lt;/sup&gt; St E</td>
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<tr>
<td>2</td>
<td>East and west side of 201&lt;sup&gt;st&lt;/sup&gt; Ave E</td>
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<td>3</td>
<td>East and west side of 201&lt;sup&gt;st&lt;/sup&gt; Ave Ct E</td>
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<td>9</td>
<td>North and south side of 100&lt;sup&gt;th&lt;/sup&gt; St E</td>
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<tr>
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<td>12</td>
<td>North and south side of 105&lt;sup&gt;th&lt;/sup&gt; St Ct E, West of 198&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>North and south side of 107&lt;sup&gt;th&lt;/sup&gt; St E, West of 198&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<tr>
<td>16</td>
<td>North and south side of 108&lt;sup&gt;th&lt;/sup&gt; St E, West of 198&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>17</td>
<td>North and south side of 108&lt;sup&gt;th&lt;/sup&gt; St Ct E, West of 198&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<tr>
<td>22</td>
<td>North and south side of 112&lt;sup&gt;th&lt;/sup&gt; St E, West of 198&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>East and west side of 189&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>East and west side of 190&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>East and west side of 191&lt;sup&gt;st&lt;/sup&gt; Ave Ct E</td>
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<td>28</td>
<td>East and west side of 192&lt;sup&gt;nd&lt;/sup&gt; Ave E</td>
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<tr>
<td>29</td>
<td>East and west side of 196&lt;sup&gt;th&lt;/sup&gt; Ave E</td>
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<td>30</td>
<td>East and west side of Wildflower Ct E</td>
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<td>31</td>
<td>East and west side of Wilderness Ct E</td>
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<td>32</td>
<td>East and west side of Springwood Drive E</td>
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<tr>
<td>33</td>
<td>North and south side of Springwood Drive E from 196&lt;sup&gt;th&lt;/sup&gt; to Meadowlark</td>
</tr>
<tr>
<td>34</td>
<td>North and south side of Meadowlark</td>
</tr>
</tbody>
</table>
Streets Outside City Limits

(35) East and west side of 198th Ave Ct E, Between 104th ST E & 108th St Ct E
(36) East and West side of 200th Ave Ct E, Between 104th ST E & 108th St Ct E
(37) East and west side of 201st Ave E, South of 112th ST E
(38) East and west side of 201st Ave Ct E, South of 112th ST E
(39) East and west side of 202nd Ave E
(40) East and west side of 202nd Ave Ct E
(41) East and west side of 203rd Ave E
(42) East and west side of 204th Ave Ct E
(43) East and west side of 205th Ave E
(44) East and west side of 205th Ave Ct E
(45) East and west side of 206th Ave Ct E
(46) East and west side of 207th Ave E
(47) East and west side of 207th Ave Ct E
(48) East and west side of 208th Ave Ct E
(49) East and west side of 209th Ave E
(50) East and west side of 209th Ave Ct E
(51) East and west side of 210th Ave E
(52) East and west side of 210th Ave Ct E
(53) East and west side of 211th Ave Ct E
(54) East and west side of 195th Ave E, South of 109th St E
(55) East and west side of 197th Ave E, South of 112th St E
(56) East and west side of 198th Ave E, South of 112th St E
(57) North and south side of 104th St E, East of 200th Ave Ct E
(58) North and south side of 105th St E, East of 200th Ave Ct E
(59) North and south side of 105th St Ct E, East of 200th Ave Ct E
(60) North and south side of 106th St E, East of 200th Ave Ct E
(61) North and south side of 106th St Ct E, East of 200th Ave Ct E
(62) North and south side of 107th St E, East of 200th Ave Ct E
(63) North and south side of 107th St Ct E, East of 200th Ave Ct E
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(65) North and south side of 108th St Ct E, East of 200th Ave Ct E
(66) North and south side of 109th St E, East of 200th Ave Ct E
(67) North and south side of 111th St Ct E, East of 202nd Ave E
(68) North and south side of 112th St E, East of 202nd Ave E
(69) North and south side of Bonanza Dr E
(70) North and south side of La Paloma Dr E
(71) North and south side of La Rita Dr E

10.36.030 Permits

The City is authorized to develop reasonable criteria, including but not limited to residency in the immediate area, for authorizing certain persons to park vehicles in certain restricted zones. The City may require persons applying for permits to show
proof of residency. For any restricted parking zone, the City may issue permits, decals or other means of identification, maintain lists of vehicles owned or used by residents, or adopt any other reasonable means of distinguishing vehicles that are authorized to park in restricted zones.

10.36.040 **Permits not transferable - Penalty**

No person shall transfer or authorize the use of any City-issued permit authorizing a vehicle to park in any restricted parking zone. Any City-issued permit may be revoked, and not renewed for a period of one year, for violation of this section.

10.36.050 **Violation - Penalty**

Any vehicle parked in a restricted parking zone without a valid permit will be ticketed. The ticket shall carry a fine of $25.00, in addition to applicable statutory assessments under RCW 46.63.110. The infraction form issued to violators shall comply with all applicable portions of RCW 46.63.060. The hearing requirements contained in RCW 46.63.070 through 46.63.151 shall apply to violations of this Chapter and are hereby incorporated by reference.

**Section 2.** Severability

If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 3.** Annexation effects

The city will not enforce this ordinance on any streets listed above as “Streets Outside City Limits”. However, the city shall enforce this ordinance on any of the aforementioned streets thirty (30) days after said streets are annexed into the city limits.

**Section 4.** Effective date

This ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five days as required by law.

PASSED by the City Council and approved by the Mayor this _____ day of __________, 2006.

__________________________
Neil Johnson, Mayor
ATTEST:

Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney

Passed:
Valid:
Published:
Effective Date:
# City of Bonney Lake, Washington
## Council Agenda Bill (C.A.B.) Approval Form

<table>
<thead>
<tr>
<th>Department/Staff Contact:</th>
<th>Council/Wrkshp Mtg Date:</th>
<th>Agenda Bill Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin Svcs/Edvalson</td>
<td>June 6, 2006</td>
<td>AB06-129</td>
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<table>
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<tr>
<th>Ordinance Number:</th>
<th>Resolution Number:</th>
<th>Councilmember Sponsor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>D06-129</td>
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<td>Noble</td>
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</tbody>
</table>

## Budget Information
- **2006 Budget Amount**
- **Required Expenditure**
- **Impact**
- **Remaining Balance**

### Explanation
No Budget Impact.

### Agenda Subject:
Discussion regarding proposed ordinance prohibiting the use of internal combustion engines, with some exceptions, on Lake Bonney.

### Administrative Recommendation:
Discuss and move forward to next regular Council meeting.

### Background Summary:
Historically the City has prohibited the use of internal combustion engines on Lake Bonney. At some point in the past, the City repealed the ordinance enforcing the prohibition and failed to adopt a replacement ordinance. The oversight was discovered and a correcting ordinance is attached for Council discussion.

<table>
<thead>
<tr>
<th>Council Committee Dates:</th>
<th>Commission Dates:</th>
<th>Board/Hearing Examiner Dates:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Committee:</td>
<td>Planning Commission:</td>
<td>Park Board:</td>
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<td>Community Development &amp; Planning Committee:</td>
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<tr>
<td>Council Workshops: 06.06.06</td>
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### Council Action:
- **Council Call for Hearing:**
- **Council Hearings Date:**
- **Council Referred Back to:**
- **Workshop:**
- **Committee:**
- **Council Tabled Until:**
- **Council Meeting Dates:**

### Signatures:
- **Dir. Authorization:** Signature
- **Mayor:**
- **Date City Attorney Reviewed:**
ORDINANCE NO. D06-129

AN ORDINANCE OF THE CITY OF BONNEY LAKE, WASHINGTON AMENDING THE BONNEY LAKE MUNICIPAL CODE TO ADD A NEW SECTION 16.16.040 RELATING TO THE PROHIBITION OF INTERNAL COMBUSTION ENGINES ON LAKE BONNEY.

WHEREAS, the Bonney Lake City Council desires to promote sound stewardship of Lake Bonney and its surrounding areas; and

WHEREAS, the Bonney Lake City Council desires to promote safe and healthy recreational activities on Lake Bonney for its residents;

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

   Section 1. A new Bonney Lake Municipal Code section 16.16.040 is hereby added to read as follows:

16.16.040  Internal combustion engines prohibited on Lake Bonney.

   No person shall use or operate any watercraft powered by an internal combustion engine upon the waters of Lake Bonney. A person may use or operate watercraft powered by an electric trolling motor or any other non-motorized watercraft upon the waters of Lake Bonney. Notwithstanding the foregoing, the following special exceptions shall be lawful:

   A. The mayor of the City of Bonney Lake, or his designee, may authorize special occasion permits for the use and/or operation of watercraft powered by an internal combustion engine on Lake Bonney for ceremonial and other appropriate purposes consistent with appropriate utilization and conservation of the lake.

   B. The officers and employees of governmental law enforcement, fire and research agencies are exempt from the provisions of this section and need not obtain a written permit for the use and/or operation of watercraft powered by an internal combustion engine upon Lake Bonney; provided that said use and/or operation is limited to the performance of the employees' duties.

   Section 2. If any one or more, section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force effect.

   Section 3. This Ordinance shall take effect thirty (30) days after its passage, subject to prior approval by the Mayor and prior publication for five days as required by law.

   PASSED by the City Council and approved by the Mayor this _____ day of ________________________, 2006.
ATTEST:

Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:

James J. Dionne, City Attorney
City of Bonney Lake, Washington
Council Agenda Bill (C.A.B.) Approval Form

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<tr>
<td>Executive/Morrison</td>
<td>June 6, 2006</td>
<td>AB06-138</td>
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<tr>
<td>Ordinance Number:</td>
<td>Resolution Number:</td>
<td>Councilmember Sponsor:</td>
</tr>
</tbody>
</table>

BUDGET INFORMATION

2006 Budget Amount | Required Expenditure | Impact | Remaining Balance |

Explanation
No budget impact is anticipated by this proposed change in standard contract language for the City.

Agenda Subject: Proposed language to amend the City’s standard professional services and construction agreements related to legal compliance with the provisions of the Immigration Reform and Control Act of 1986.

Administrative Recommendation: None.

Background Summary:
Upon review of a proposed agreement for roofing at the Public Safety Building, Councilmember King asked that the City consider additional language in its standard agreements to require proof of compliance with immigration law for all the City’s contractors and their employees. Proposed language addressing this point has been attached for Council discussion. City Administration seeks a majority consensus opinion on the proposed language.

Council Committee Dates: | Commission Dates: | Board/Hearing Examiner Dates: |
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</table>

Council Action:
Council Call for Hearing: Council Hearings Date:
Council Referred Back to: Workshop: Committee:
Council Tabled Until: Council Meeting Dates:

Signatures:
Dir. Authorization: Mayor: Date City Attorney Reviewed:
The following language would be added to the City’s standard Professional Service Agreements and Construction Agreements respectively (additional new language is underlined):

**Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees’ eligibility for employment. The contractor shall include a provision substantially the same as this section in any and all contracts with subcontractors performing work required of the contractor under this contract. The contractor agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the contractor failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

**Nondiscrimination and Legal Compliance.** Contractor agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees’ eligibility for employment. The Contractor shall include a provision substantially the same as this section in any and all contracts with subcontractors performing work required of the Contractor under this contract. The Contractor agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the Contractor failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Contractor understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Contractor shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.