ORDINANCE NO. 1502

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING SECTIONS 18.04.030, 18.04.130, AND 18.08.030 OF THE BONNEY LAKE MUNICIPAL CODE, RELATING TO THE PRODUCTION, PROCESSING, AND RETAIL SALES OF MARIJUANA.

WHEREAS, in November 2012 the voters of the State of Washington approved Initiative 502, providing a framework whereby individuals and business entities may be granted a state license authorizing them to produce, process, or sell marijuana and marijuana-infused products for recreational use; and

WHEREAS, pursuant to Initiative 502, the Washington State Liquor Control Board has developed and implemented regulations governing the licensing, location, and operation of marijuana producers, processors, and retailers; and

WHEREAS, the Washington State Liquor Control Board has begun issuing licenses authorizing individuals and businesses to produce, process, and sell marijuana, marijuana concentrates, and marijuana-infused products; and

WHEREAS, marijuana remains a Schedule 1 drug under the federal Controlled Substances Act, and the production, possession, and use of marijuana for any purpose, including medical use, remains illegal under federal law; and

WHEREAS, in 2012 the City enacted a ban on medical cannabis collective gardens and dispensaries in Bonney Lake Municipal Code section 18.08.030; and

WHEREAS, unless the City acts to address the production, processing, and retail sales of recreational marijuana and marijuana-infused products, such uses will be able to locate in Bonney Lake, resulting in the adverse secondary effects on the City and its citizens; and

WHEREAS, on September 9, 2014, the Planning Commission made recommendations to the City Council for the regulation of licensed marijuana businesses through zoning and other land use controls; and

WHEREAS, in its recommendation, the Planning Commission presented the City Council with three options: (1) a ban of all marijuana businesses; (2) establish zoning regulations allowing retail locations in the Eastown and Midtown zoning districts, impose additional regulations on marijuana retail businesses, and prohibit marijuana producers and processors in all zoning districts; and (3) pass no regulations related to marijuana businesses; and

WHEREAS, the issues considered by the Planning Commission in its report included the substantial number of private parks that are dedicated for public use in the City, potential City liability arising from lawsuits related to marijuana businesses, the potential for increased crime associated with marijuana businesses, air pollution and odors associated with marijuana producers and processors, hazardous materials associated with marijuana production and processing, the high
energy use required by marijuana producers, and the lack of food safety regulations governing marijuana processors; and

WHEREAS, the City is a family-oriented community, and is concerned about the adverse secondary effects the opening of marijuana producers, processors, and retailers could have on the community, such as increased crime associated with the valuable products and large amounts of cash kept in these businesses, environmental impacts of producers and processors, and the increased visibility of marijuana to children with the message that marijuana use is “acceptable”; and

WHEREAS, the City’s police department is not provided any additional funding by the state to address the potential for increased crime created by marijuana producers, processors, and retailers; and

WHEREAS, on January 16, 2014 the Washington State Attorney General issued an opinion stating that local governments are not preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction, and that nothing in Initiative 502 limits the broad authority that local governments have to regulate within their jurisdictions, including regulations concerning licensed marijuana businesses; and

WHEREAS, article XI, section 11 of the Washington Constitution grants local governments jurisdiction over issues such as land use, zoning, and standards for the issuance of business licenses; and

WHEREAS, local ordinances are entitled to a presumption of constitutionality; and

WHEREAS, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity; and

WHEREAS, notwithstanding the State’s decriminalization of the production, processing, and retail sales of marijuana, local governments retain authority over zoning, development regulations, and the issuance of business licenses within their jurisdictions; and

WHEREAS, the City Council has determined that it is in the best interest of the City and its citizens to prohibit the production, processing, and retail sales of marijuana in the City of Bonney Lake.

WHEREAS, the City issued a Determination of Non-Significance on October 7, 2014 pursuant to WAC 197-11-340 in order to comply with the requirements of Chapter 43.21C RCW; and

WHEREAS, pursuant to the Growth Management Act - Chapter 36.70A RCW this Ordinance was provided to the Department of Commerce for 60-day review and comment by the Department and other State agencies; and
WHEREAS, expedited review was requested and granted by Commerce and the review period concluded on October 21, 2014.

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held by the Planning Commission on November 5, 2014.

NOW THEREFORE, the City Council of Bonney Lake, Washington, do ordain as follows:

Section 1. Section 18.04.030, “C,” of the Bonney Lake Municipal Code and the corresponding portions of Ordinance Nos. 1442 § 2, 746 § 19, and 740 § 2 are hereby amended to read as follows:

18.04.030 “C”

“Camouflaged” means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure or new structure, tower, or mount within trees so as to be significantly screened from view or camouflaged to appear as a non-antenna structure (i.e., tree, flagpole with flag, etc.).

“Cannabis” means all parts of the plant cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this definition, “cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or eake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or eake, or the sterilized seed of the plant which is incapable of germination. The term “cannabis” includes cannabis products and usable cannabis.

“Cannabis collective garden” means a garden where “qualifying patients” as described in RCW 69.51A.085 may engage in the production, processing, and/or delivery of cannabis for medical use.

“Cannabis dispensary” means any facility or location where cannabis is grown, produced, manufactured, or made available and/or distributed.

“Cell site” or “site” means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

“City center and view corridor area” means an area defined by the boundaries of the city center and the view corridor for Mt. Rainier along SR 410 from approximately 500 feet northwest of the intersection with Sumner/Buckley Highway (Bonney Lake Main Street to the dip in SR 410 just west of Angeline Road undercrossing (the point where Mt. Rainier disappears from view)).

“Co-location” means the use of a personal wireless service facility or cell site by more than one personal wireless service provider.
“Conditional use” means a use permitted in one or more classifications as defined by this title but which use because of characteristics peculiar to it, or because of size, technological processes, or type of equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demand upon public facilities, required a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zones or zones, and to assure that such use shall not be harmful to the public interest.

“Conditional use permit” or “CUP” means the documented evidence of authority granted by the hearing examiner to locate a conditional use at a particular location.

“Condominium” means a multiple-family dwelling and its accessory uses and grounds in which each dwelling unit is individually owned, and all or any part of the dwelling structure, accessory uses and grounds are owned cooperatively by the owners of said dwelling units, and maintenance functions are performed by required subscriptions from said owners.

“Convalescent home,” see “Nursing home.”

“COW” means “cell on wheels.”

Section 2. Section 18.04.130, “M,” of the Bonney Lake Municipal Code and the corresponding portions of Ordinance Nos. 1364 § 3, 746 § 19, and 740 § 2 are hereby amended to read as follows:

“Manufactured home” means a structure constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

A. Is comprised of at least two fully enclosed parallel sections each of not less than 12 feet wide by 36 feet long;

B. Was originally constructed and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch;

C. Has exterior siding similar in appearance to siding materials commonly used on conventional site-built Uniform Building Code single-family residences;

D. Is built on a permanent chassis and designed solely for the purpose of human habitation.

“Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC (tetrahydrocannabinol) concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
“Marijuana collective garden” (also referred to as “medical marijuana collective garden,” “cannabis collective garden,” and “medical cannabis collective garden”) means a location where “qualifying patients,” as defined in RCW 69.51A.010(4), may engage in the production, processing, and/or delivery of marijuana for medical use, as described in RCW 69.51A.090.

“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty percent.

“Marijuana dispensary” (also referred to as “medical marijuana dispensary,” “cannabis dispensary,” and “medical cannabis dispensary”) means any facility where marijuana or marijuana products are grown, produced, manufactured, sold or otherwise made available and/or distributed that is not licensed by the Washington State Liquor Control Board.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty percent. The term “marijuana-infused products” does not include either useable marijuana or marijuana concentrates.

“Marijuana processor” means a person, business, or organization licensed by the Washington State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale in retail outlets, and sell useable marijuana, marijuana concentrates, and marijuana-infused products at wholesale to marijuana retailers.

“Marijuana producer” means a person, business, or organization licensed by the Washington State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana retailer” means a person, business, or organization licensed by the Washington State Liquor Control Board to sell useable marijuana, marijuana concentrates, and marijuana-infused products in a retail outlet.

“Massage therapy/spa” means a scientific or skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone and circulation and promoting health and physical well-being. The term includes, but is not limited to, manual and mechanical procedures for the purpose of treating soft tissue only, the use of supplementary aids such as rubbing alcohol, liniments, oils, antiseptics, powders, herbal preparations, creams or lotions, procedures such as oil rubs, salt glows and hot or cold packs or other similar procedures or preparations commonly used in this practice. This term specifically excludes manipulation of the spine or articulations and excludes sexual contact.

“Medical-dental clinic” means an establishment for the treatment of outpatients, and providing no overnight care for patients.

“Microbrewery” means a facility that produces beer and sells it to the public by one or more of the following methods: through the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and in some cases, directly to the consumer through carry-outs or on-site taproom sales. Microbreweries shall
have a production capacity not to exceed 15,000 U.S. barrels per year and shall have a full food menu.

“Mini-day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons.

“Mobile home” means a single-family prefabricated residential unit manufactured according to the standards of the statutes of the state and federal government, capable of being moved upon the public roads and highways, so designed and equipped as to be served by a sanitary sewer or septic tank system, supported by leveling jacks or blocks.

“Mobile home park” is a tract of land used or designated for the use of two or more mobile homes.

“Modification” means the changing of any portion of a facility such as a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.

“Modular home” means any structure other than a mobile or manufactured home designed primarily for human occupancy, which is either entirely or substantially prefabricated or assembled at a place other than a building site and which has been approved pursuant to RCW 43.22.455 and bears the insignia of the Washington State Department of Labor and Industries.

“Mount” means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts:

A. Building Mounted. A personal wireless service facility mount fixed to the roof or side of a building.

B. Ground Mounted. A personal wireless service facility mount fixed to the ground, such as a tower.

C. Structure Mounted. A personal wireless service facility fixed to a structure other than a building, such as light standards, electrical transmission tours, utility poles, and bridges.

Section 3. Section 18.08.030, formerly titled “Marijuana producers, processors, and retailers,” of the Bonney Lake Municipal Code and the corresponding portions of Ordinance No. 1442 § 3 are hereby amended to read as follows:

18.08.030 Cannabis collective gardens and dispensaries Marijuana uses prohibited.

A. Marijuana collective gardens and dispensaries prohibited. Notwithstanding any other provision of the Bonney Lake Municipal Code, cannabis marijuana collective gardens and cannabis marijuana dispensaries are prohibited in all zoning districts.
B. Marijuana producers, processors, and retailers prohibited. Notwithstanding any other provision of the Bonney Lake Municipal Code, marijuana producers, marijuana processors, and marijuana retailers are prohibited in all zoning districts.

Section 4. Severability. If any one or more section, subsection, or sentence of this ordinance is 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 5. Effective Date. This ordinance shall take effect five (5) days after its passage, approval and publication as required by law. Upon taking effect, this Ordinance shall supersede and nullify Ordinance Nos. 1468, 1469, 1481, and 1489, which enacted a temporary moratorium on marijuana uses.

PASSED BY THE CITY COUNCIL this 13th day of January, 2015.

[Signature]
Neil Johnson, Jr., Mayor

AUTHENTICATED:
[Signature]
Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:
[Signature]
Kathleen Haggard, City Attorney

Passed: 1/13/2015
Valid: 1/13/2015
Published: 1/21/2015
Effective Date: 1/26/2015
This Ordinance totals 7 page(s)
City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact:  
Community Development/  
Jason Sullivan – Senior Planner

Meeting/Workshop Date:  
January 13, 2015

Agenda Bill Number:  
AB15-08

Agenda Item Type:  
Ordinance

Ordinance/Resolution Number:  
D15-08A

Councilmember Sponsor:  
Councilmember Lewis

Agenda Subject:  State-Licensed Marijuana Industry

Full Title/Motion:  An Ordinance of the City of Bonney Lake, Pierce County, Washington, amending sections 18.04.030, 18.04.130, And 18.08.030 of the Bonney Lake Municipal Code, relating to the production, processing, and retail sales of marijuana.

Administrative Recommendation:

Background Summary:  On April 8, 2014 the City Council adopted Ordinance 1481 directing the Planning Commission to study and propose development regulations to the Council. The Planning Commission was instructed to study a range of approaches including zoning, development regulations, and a complete or partial prohibition in all zones.

The Planning Commission held a public meeting on April 16, 2014 and hosted a panel discussion on August 20, 2014 related to the regulation of state-licensed marijuana businesses. On September 3, 2014, the Planning Commission reviewed its memorandum which outlined three options for the City Council to consider and voted 7-0 that the memorandum be presented to the City Council.

Subsequently, on September 9, 2014, the Planning Commission presented three different options for the Council to consider: (1) complete ban on medical and recreational marijuana; (2) allow retail establishments and ban producers, processors, and collective gardens; and (3) continue to ban collective gardens and only rely on the LCB regulations to control recreational marijuana. On September 16, 2014 the City Council directed the staff to prepare ordinances implementing Options 1 and 2 and for the Planning Commission to hold public hearings on both options.

On September 23, 2014, the City Council enacted Ordinance 1489 which extend the moratorium on recreational marijuana business established under Ordinance 1481 an additional 120 days to provide time for staff to prepare an ordinances for Options 1 and 2. This moratorium will expire on February 4, 2015.

On November 5, 2014, the Planning Commission held a public hearing on Ordinance D15-08A (Formerly D14-129A) – Option 1 and D15-08B (Formerly D14-129B) – Option 2. Following the public hearing the Planning Commission voted 6-1-0 to recommend that the City Council not adopt Ordinance D15-08A and that the City Council adopt Ordinance D15-08B. This recommendation would authorize state-licensed marijuana retail establishments and ban state-licensed marijuana producers and processors.

On January 6, 2015, the City Council discussed both draft ordinances directed staff to bring back only Ordinance D15-08A which would enacted a permanent ban on all recreational marijuana businesses within the City of Bonney Lake. The Council decided not to consider Ordinance D15-08B which would have allowed a recreational marijuana retail store within the City of Bonney Lake.

Attachments:  Ordinance D15-08A

BUDGET INFORMATION

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
</tr>
</thead>
</table>

Budget Explanation:
COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review:  
Date:  
Chair/Councilmember  
Councilmember  
Forward to:  
Consent Agenda:  

Commission/Board Review:  Planning Commission  
Hearing Examiner Review:  

COUNCIL ACTION

Workshop Date(s):  
October 15, 2013,  
April 1, 2014, and  
September 16, 2014  
January 6, 2025

Meeting Date(s):  
October 22, 2013,  
April 8, 2014, and  
September 9, 2014

Public Hearing Date(s):  
Tabled to Date:  

APPROVALS

Director:  
John P. Vodopich, AICP

Mayor:  

Date Reviewed by City Attorney:  
October 1, 2014  
(if applicable):