



**BUCKLEY CITY COUNCIL MEETING AGENDA**  
**January 26, 2016**  
**Multi-Purpose Center, 811 Main Street**  
**City Council Meeting**  
**Opening 7:00 P.M.**

Call to Order  
Pledge of Allegiance  
Roll Call of Council Members

Next Ordinance #02-16  
Next Resolution #16-03  
Next Agenda Bill #AB16-010

**Special Presentation:**

White River School District – Power Point Presentation

**A. Citizen Participation**

*Time Limit of Three Minutes (Must sign up at City Hall by Wednesday prior to the Council Meeting)*

**B. Staff Reports**

**C. Main Agenda**

1. ORD No. \_\_-16: Amending BMC 3.50 – Parks Impact Fees
2. ORD No. \_\_-16: Amending Misc Code Sections - HE & BOA Conversions
3. ORD No. \_\_-16: Amending Misc Code Sections - Annual Housecleaning
4. ORD No. \_\_-16: Rezoning 25 Acres - Spiketon Rd - Evans
5. Local Agency Agreement Supplement No. 4 – Realignment Project Phase 2
6. Agreement – AV Capture All Contract – Audio Recording Service
7. Lease Agreement- Addendum #2 City and Ken Carel for Ag Facility and Lands
8. Agreement - 2016-2017 Local #286 Contract & MOU

**D. Consent Agenda**

9. A. Approve Minutes of January 12, 2016 City Council Meeting  
B. Claims

**E. Committee Reports**

- |   |               |
|---|---------------|
| 10. Mayor's Report                              | Johnson       |
| 11. Administration, Finance & Public Safety     | Boyle Barrett |
| 12. Transportation & Utilities                  | Tremblay      |
| 13. Community Services                          | Rose          |
| 15. Council Member Comments & Good of the Order |               |

*Council may add and take action on other items not listed on this agenda*



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321  
360-829-1921 ♦ Fax 360-829-2659 ♦ <http://www.cityofbuckley.com>

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## CITY OF BUCKLEY MEETING LIST

Jan 21	4:00 PM	Community Services – <b>Multipurpose Center</b>
Jan 25	7:00 PM	Planning Commission
Jan 26	7:00 PM	City Council
Feb 2	9:30 AM	Admin, Finance & Public Safety (City Hall)
Feb 2	7:00 PM	City Council Study Session
Feb 8	7:00 PM	Planning Commission
Feb 9	7:00 PM	City Council
Feb 16	9:30 AM	Admin, Finance & Public Safety (City Hall)
Feb 16	7:00 PM	Transportation & Utilities (City Hall)
Feb 17	6:00 PM	Board of Adjustments
Feb 18	7:00 PM	Community Services (City Hall)
Feb 22	7:00 PM	Planning Commission
Feb 23	7:00 PM	City Council

# January 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 <i>HAPPY NEW YEAR</i>	2
3	4	5 <i>9:30 AM Admin, Fin &amp; PS</i>	6	7	8	9
10	11 <i>10:30 AM Buckley Hall Board 7 PC</i>	12 <i>7 City Council</i>	13	14	15	16
17	18	19 <i>9:30AM Admin, Fin &amp; PS 7 Trans &amp; Utilities</i>	20 <i>6 BOA</i>	21 <i>4 Comm. Services— at Multipurpose Bldg.</i>	22	23
24	25 <i>7 PC</i>	26 <i>7 City Council</i>	27	28	29	30
31						

# February 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2 9:30 Admin, Fin & Public Safety  7 City Council Study Session	3	4	5	6
7	8  7 Planning Commission	9  7 City Council	10	11	12	13
14 	15 <b>PRESIDENT'S DAY HOLIDAY!!!</b>	16 9:30 Admin, Fin & Public Safety  7 Transportation & Utilities	17  6 Board of Adjustments	18  7 Community Services	19	20
21	22  7 Planning Commission	23  7 City Council	24	25	26	27
28	29					



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

## ITEM INFORMATION

<b>SUBJECT:</b>  <b>ORD No. __-16: Amending BMC 3.50 – Parks Impact Fees</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB16-010</b>	
	Department/Committee/Individual	Created	Reviewed	
	Mayor Pat Johnson		X	
	City Administrator – Dave Schmidt	X	X	
	City Attorney (Land) – Phil Olbrechts		X	
	City Engineer – Dominic Miller			
	City Clerk – Joanne Starr		X	
	Finance Depart – Sheila Bazzar			
	Fire Depart – Chief Predmore			
	Parks & Rec Depart – Ellen Boyd			
	Planning Depart – Kathy Thompson		X	
	Police Depart – Chief Arsanto			
	Building Depart – Mike Deadmond			
	Muni Court – Jessica Cash			

**Attachments:** Ordinance

SUMMARY STATEMENT: See findings in the Ordinance.

COMMITTEE REVIEW AND RECOMMENDATION: None

RECOMMENDED ACTION: **Motion to Approve ORD No. \_\_-16 Amending BMC 3.50 – Parks Impact Fees.**

## RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
AB16-001 - 1/12/16	Postponed and moved to 1/26/16	

**ORDINANCE NO. \_\_\_\_ - 16**

**AN ORDINANCE OF THE CITY OF BUCKLEY,  
WASHINGTON, AMENDING BMC 3.50 RELATED  
TO IMPACT FEES.**

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**WHEREAS**, impact fees are authorized for those jurisdictions planning under the Growth Management Act and are charges assessed by local governments against new development projects that attempt to recover the cost incurred by government in providing the public facilities required to serve the new development; and

**WHEREAS**, the City has adopted code provisions governing the assessment and collection of impact fees for parks and recreation, schools and transportation in Chapter 3.50 of the Buckley Municipal Code; and

**WHEREAS**, the current fees listed in BMC 3.50 were developed through evaluation and fee calculation in separate elements of the 2005 Comprehensive Plan; and

**WHEREAS**, in December, 2016 the City Council approved amendments to Elements 1-4 and 6 through adoption of Ordinance No. 31-15; and

**WHEREAS**, Element 6 of the Comprehensive Plan is the Parks, Recreation & Open Space Element that includes new updated capital improvement projects, construction estimates proportionate impact fee calculations; and

**WHEREAS**, the City Council desires to replace the existing impact fees for parks and recreation with the new fees identified in the Comprehensive Plan; and

**WHEREAS**, the 2015 Legislature enacted changes to how impact fees are to be collected by Washington counties, cities, and towns. ESB 5923 requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction;

**WHEREAS**, the deadline for counties, cities, and towns implementation of the new law

is September 1, 2016; however since BMC 3.50 is being amended the City Council desires to incorporate a deferral system for the collection of impact fees now in order to comply with the law;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

**Section 1.** BMC 3.50 is hereby amended to read as follows:

**3.50.010 Definitions.**

The following words and terms shall have the following meanings for the purposes of this title, unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

“Act” means the Growth Management Act, Chapter 17, Laws of 1990, 1st Extraordinary Session, Chapter 36.70A RCW, et seq., and Chapter 32, Laws of 1991, 1st Special Session, RCW 82.02.050, et seq., as now in existence or as hereafter amended.

“Boeckh Index” means the area cost allowances for school construction determined under WAC 180-27-060.

“Capacity” means the number of students the White River School District’s facilities can accommodate district-wide at each grade span, based on the district’s adopted level of service.

“Capital facilities” means the facilities or improvements included in the city of Buckley capital facilities element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“City Comprehensive Parks, Recreation and Open Space Plan – Buckley” means the planning document that includes a park and recreation inventory, facility demand, policy and guidance on developing regional/city-wide and local park and recreation facilities.

“Department” means the planning department.

“Development activity” means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in use of land that creates additional demand and need for public facilities.

“Development approval” means any written authorization from the city which authorizes the commencement of a development activity.

“Encumber” means to reserve, set aside or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

“Impact fee” means the fee levied pursuant to this chapter as a condition of issuance of a building permit or development approval. “Impact fee” does not include a reasonable permit or application fee and does not preclude a SEPA mitigation fee.

“Impact fee account” or “account” means the account established for each type of public facility for which impact fees are collected. Such account shall be established pursuant to this chapter and shall comply with the requirements of RCW 82.02.060.

“Impact fee schedule” means the fee schedules set forth in this chapter.

“Independent fee calculation” means the park impact calculation, the traffic engineering calculation, the school impact fee calculation, and/or economic documentation prepared by a feepayer to support the assessment of an impact fee other than by the use of impact fee schedules.

“Level of service (LOS)” means an established minimum capacity for public facilities or services that is planned to be provided per unit demand or other appropriate measure of need and is used as a gauge for measuring the quality of service.

“Park and recreation facilities” means those parks and recreation facilities so designated in the [Parks, Recreation and Open Space](#) element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“Project improvements” mean site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the council shall be considered a project improvement.

“Public facilities” means publicly owned parks and recreational facilities, public roads and the White River School District.

“Service area” means a geographic area described in the city’s capital facilities plan in which a defined set of public facilities provides service to development within the area; provided, that the service area for schools shall be the White River School District. Service areas may be separately described for each type of public facility.

“Square footage” means the square footage of the gross floor area of the development.

“State” means the state of Washington.

“Street” means a right-of-way that affords the principal means of access to abutting property, and its accompanying signalization improvements, including an avenue, place, way, drive, lane, boulevard, highway, road and other thoroughfare, except an alley.

“System improvements” mean public facilities that are included in the capital facilities plan and are designed to provide service within the community at large, in contrast to project improvements.

“Transportation plan” means the transportation element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“White River School District study” means the “White River School District Capital Facilities Plan,” and such study as amended, which is incorporated herein by reference, a copy of which is on file with the department.

### **3.50.020 Exemptions.**

The following development activities shall be exempt from the payment of impact fees:

- (1) Replacement of a structure with a new structure of the same size and use at the same site or lot when the application for a building permit for such replacement occurs within six months of the demolition or destruction of the prior structure;
- (2) Alterations or expansion or enlargement or remodeling or rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed;
- (3) The construction of accessory residential structures that will not impact on public facilities;
- (4) Alterations of an existing nonresidential structure that does not expand the usable space or will not create additional impacts on public facilities greater than the highest level of impact that previously has been caused by use of that structure;
- (5) Miscellaneous improvements, including but not limited to fences, walls, swimming pools and signs;
- (6) Demolition or moving of a structure.

Nonresidential new development will not be charged a park impact fee or a school impact fee; provided, however, that a nonresidential development may still be required to dedicate land for parks under SEPA.

The planning director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or any other section. Determinations by the director shall be subject to city council approval.

### **3.50.030 Credits.**

A feepayer may request that a facilities credit be awarded to them for the value of land, facilities, or monetary compensation that the city or school district has agreed to accept as an off-set against a park or school impact fee from a feepayer regarding the development activity. Determination as to whether to accept land and/or proposed improvements as a credit against park or school impact fees and the amount of that credit shall be in the sole discretion of the city or school district. For each request for a credit, the city or school district may require the feepayer to provide an appraisal prepared by an approved appraiser so as to help determine the value of the dedicated land and/or improvements to that land. All appraisal costs shall be borne by the feepayer. Any claim for credit must be made not later than the time of application for a building permit.

### **3.50.035 Assessment of impact fees.**

A. The City shall collect impact fees, based on the provisions of ~~BMC Chapter 3.50.040~~ through BMC 3.50.060, or an independent transportation fee calculation as provided for in ~~BMC Chapter 3.50.070~~, from any applicant seeking development approval from the City for any development activity within the City, where such development activity requires the issuance of a building or occupancy permit. This shall include, but is not limited to, the development of residential, commercial, retail, office, and industrial land, and includes the expansion of existing uses that creates a demand for additional public facilities, as well as a change in existing use that creates a demand for additional public facilities.

B. Where a change in use triggers review under the State Environmental Policy Act or increases the trip generation by more than 5% or ten peak hour trips, whichever is less, the Director shall calculate a transportation impact fee based on the increases in the trip generation rate.

C. Impact fees shall be assessed at the time the complete building permit application is submitted for each unit in the development, using either the impact fee schedules then in effect or

an independent transportation fee calculation as provided for in BMC Chapter 3.50.070. The City shall not accept an application for a building permit if final plat, PRD, or binding site plan approval is needed and has not yet been granted by the City. Furthermore, the City shall not accept an application for a building permit unless prior to submittal or concurrent with submittal, the fee payer submits complete applications for all other discretionary reviews needed, including, but not limited to, design review, the environmental determination, and the accompanying checklist.

D. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to BMC Section 3.50.030 or 3.50.090, shall submit, along with the complete building permit application, a copy of the letter prepared by the Director and/or designee setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the fee payer at the time the building permit is issued or prior to final building inspection as set forth in Subsection (F) below.

E. Except as provided in subsection (F) below, the Department shall not issue a building permit unless and until the impact fees required by this Chapter, less any permitted exemptions, credits or deductions, have been paid.

F. Impact fee payments may be deferred for single-family detached and attached residential construction until prior to the City conducting a final building inspection as authorized by RCW 82.02.020(3). All applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign an Impact Fee Deferral Agreement in a form acceptable by the City Attorney. The applicant will pay a \$50 administrative fee, along with fees necessary for recording the agreement in the office of the Pierce County Auditor. The Impact Fee Deferral Agreement shall require the applicant to grant and record an impact fee lien as required by RCW 82.02.020(3). The City shall withhold certification of final inspection, certificate of occupancy or equivalent final certification until the deferred impacts fees have been paid in full. The term of an impact fee deferral shall not exceed 18 months.

In the event that the fees are not paid within the time provided in this subsection, the City shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as revised herein, and also except that the City may elect to have the school district institute foreclosure proceedings for the collection of school impact fees as authorized by RCW 82.02.020(3). The then-present owner shall also pay the City's reasonable attorney fees and costs incurred in the foreclosure process. Notwithstanding the foregoing, the City shall not commence foreclosure proceedings less than thirty (30) calendar days prior to providing written notification to the then-present owner of the property via certified mail with return receipt requested advising of its intent to commence foreclosure proceedings. If the then-present owner cures the default within the thirty-day cure period, no attorney fees and/or costs will be owed. In addition, the City retains its full authority to withhold inspections and to suspend, revoke or refuse to issue occupancy and other building permits and to commence enforcement actions due to non-payment of impact fees.

#### **3.50.040 Impact fee for parks and recreation facilities.**

The park and recreation impact fee imposed on residential development is based on the cost of capital projects listed in the Parks, Recreation and Open Space Element of the Comprehensive Plan. The parks and recreation impact fee imposed shall be that which is set forth in the parks impact fee calculation identified in the comprehensive plan. The fees shall be assessed and collected pursuant to BMC Chapter 3.50.035.

~~Park and recreation impact fees shall be deposited in the park construction fund. The fees shall be assessed and collected at the time of the final plat approval, or upon application for a building permit for construction of a residential dwelling unit, whichever is earlier.~~

(1) Park and recreation impact fee shall be assessed to all new residential construction as follows:

Type of Construction	Impact Fee per Dwelling Unit
Single-family homes	<del>\$772.00</del> \$1,624.70
Multiple-family residential	<del>\$517.00</del> \$1,331.52

(2) The park and recreation impact fees in [BMC Chapter 3.50.40\(1\)](#) ~~may will~~ be reviewed annually to consider adjustments to the fees to account for increased costs of labor, construction materials and real property. The City Council intends that such review should occur concurrently with the annual review of the Capital Facilities Plan element of the City's Comprehensive Plan.

**3.50.050 Impact fee accounts for the White River School District.**

White River School District impact fees shall be submitted to the White River School District upon receipt. The fee shall be collected ~~upon application for a building permit for construction of a residential dwelling unit~~ pursuant to [BMC Chapter 3.50.035](#).

(1) White River School District impact fees shall be assessed to all new construction as follows:

Type of Construction	Impact Fee per Dwelling Unit
Single-family homes	\$0.00
Multiple-family residential	\$0.00

**3.50.060 Impact fee for street facilities.**

Street impact fees shall be deposited in the street construction fund. The fees shall be assessed and collected ~~upon application for a building permit~~ pursuant to [BMC Chapter 3.50.035](#). The assessments shall be made in accordance with Appendix 6-F, Table 11 of the 2005 City of Buckley Comprehensive Plan, a copy of which is attached to the ordinance codified in this section as Exhibit A.

**3.50.070 Alternative street facilities impact fee calculation.**

The applicant may petition the planning director for an alternative calculation of the impact fee by providing evidence of a study more specifically related to the proposed use, warranting a different trip generation estimate than the trip generation numbers provided in Appendix 6-F, Table 11 of the transportation element of the city of Buckley comprehensive plan. The petition will be considered only if the proposed use is not specifically included in Appendix 6-F, Table 11, or if the applicant is able to show site-specific information warranting a reduction for pass-through traffic. If the planning director approves the petition, the applicant shall pay the alternative impact fee calculated by using the approved trip generation numbers multiplied by the fee per trip identified in the transportation element of the city of Buckley comprehensive plan, as now constituted or hereafter amended or modified, in lieu of the fees provided for in BMC 3.50.060.

**3.50.080 Reference to ITE Handbook authorized in lieu of Appendix 6-F, Table 11 for street facilities impact fee calculation.**

Where the proposed use is not specifically listed under Appendix 6-F, Table 11 of the 2005 City of Buckley Comprehensive Plan, the planning director may determine the appropriate trip generation estimate by referring to the ITE Handbook, as now constituted or as hereafter amended or modified. The trip generation estimate shall be applied to the same cost per trip identified in the city of Buckley street plan, as it now exists or is hereafter modified.

**3.50.090 Street impact fee credit for off-site improvements.**

Fee payers may request that a facilities credit be awarded to them for the value of off-site, nonfrontage, transportation facilities constructed; provided, that the facilities are identified in the list of projects used to determine the impact fee.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 3. Effective Date.** This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 12<sup>th</sup> day of January, 2016.

\_\_\_\_\_  
MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

PUBLISHED:

EFFECTIVE:

BY \_\_\_\_\_



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b> <b>ORD No __-16: Conversion from the board of adjustment system to the hearing examiner system and adding one administrative permit type.</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB16-011</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson	X	
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
	Muni Court – Jessica Cash		
<b>Attachments:</b> Commission Advisory Report and Recommendation			
<p>SUMMARY STATEMENT: This ordinance removes the Buckley Board of Adjustment from the role of decision-maker and gives that role to the hearing examiner and director.</p> <p><b>AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS BMC 1.12.020(1), 8.18.030(1), 12.04.020 (5), 12.04.040, 12.08.140, 12.08.260, 12.08.320, 12.08.330(1&amp;4), 12.04.340, 14.30.920, 19.12.145, 19.12.155, 19.20.010(2), 19.30.120, 19.30.140(3 &amp; 3.k), 19.30.210, 19.30.220, 19.30.270, 19.32.030, 19.32.060, 19.32.090(2.b), 19.42.030, 20.01.020(6&amp;24), 20.01.030, 20.01.050, 20.01.090(5.a&amp;6), 20.01.100(3,4,&amp;8), 20.01.200, 20.01.220, 20.01.240, 20.01.250(1.d.v), AND 20.01.260; AMENDING CHAPTER 19.40 BMC; REPEALING CHAPTER 2.34 BMC; TO REMOVE THE BOARD OF ADJUSTMENT FROM THE CITY’S DECISION-MAKING BODIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.</b></p> <p>The planning commission conducted a hearing on this ordinance January 11, 2016, and recommended approval the same night.</p> <p>The ordinance was reviewed by the city attorney and was sent to the Department of Commerce; the city complies with the Growth Management Act in relation to this proposal and can be adopted immediately.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: <b>Motion to Approve ORD No. __-16 Amending Misc Code Sections - HE &amp; BOA Conversions.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

ORDINANCE NO. \_\_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS BMC 1.12.020(1), 8.18.030(1), 12.04.020 (5), 12.04.040, 12.08.140, 12.08.260, 12.08.320, 12.08.330(1&4), 12.04.340, 14.30.920, 19.12.145, 19.12.155, 19.20.010(2), 19.30.120, 19.30.140(3 & 3.k), 19.30.210, 19.30.220, 19.30.270, 19.32.030, 19.32.060, 19.32.090(2.b), 19.42.030, 20.01.020(6&24), 20.01.030, 20.01.050, 20.01.090(5.a&6), 20.01.100(3,4,&8), 20.01.200, 20.01.220, 20.01.240, 20.01.250(1.d.v), AND 20.01.260; AMENDING CHAPTER 19.40 BMC; REPEALING CHAPTER 2.34 BMC; TO REMOVE THE BOARD OF ADJUSTMENT FROM THE CITY'S DECISION-MAKING BODIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, Section 35A.663.110 RCW allows code cities to create Boards of Adjustment; and

WHEREAS, the City of Buckley created the Board of Adjustment in Article X of Ordinance 652 on March 14, 1961; and

WHEREAS, the code regarding the Board of Adjustment was modified periodically over the years; and

WHEREAS, Section 35A.63.170 RCW allows a Hearing Examiner to hear and decide applications and hear appeals of administrative decisions; and

WHEREAS, the City of Buckley instituted the Hearing Examiner system through Ordinance 10-09 in 2009; and

WHEREAS, the City of Buckley accepts the expertise and knowledge of the hearing examiner; and

WHEREAS, the planning commission developed an ordinance to remove the Board of Adjustment from the code in favor of the Hearing Examiner system; and

WHEREAS, the planning commission conducted a public hearing on this ordinance January 11, 2016; and

WHEREAS, the proposal received environmental review with a determination of non-significance issued December 2, 2015; and

WHEREAS, the request for expedited review in place of the 60-day notice was received by the Washington State Department of Commerce December 3, 2015, under Material ID Number 21870 informing it of the proposed change in development regulations; and

WHEREAS, the Department of Commerce granted expedited review on December 18, 2015;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Buckley Municipal Code Section 1.12.020(1) BMC is hereby amended as follows:

**1.12.020 Definitions.**

As used in this chapter, unless a different meaning is plainly required:

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer ~~or the Buckley board of adjustment~~ or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 2. Buckley Municipal Code Chapter 2.34 is hereby repealed.

Section 3. Buckley Municipal Code Section 8.18.030(1) BMC is hereby amended as follows:

**8.18.030 Definitions.**

The words and phrases in this chapter shall have the following meanings, unless the context otherwise indicates:

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer ~~or the Buckley board of adjustment~~ or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 4. Buckley Municipal Code Section 12.04.020 (5) BMC is hereby amended as follows:

**12.04.020 Definitions.**

All words in this chapter shall be given their common meaning unless the context indicates otherwise. The definitions of the words set forth below shall be utilized in interpreting the ordinance codified in this chapter: ...

(5) “Agency” means the city council, the planning commission, ~~the board of adjustment,~~ or any other department, officer, board or commission within the city that is authorized to make law, hear contested cases, or otherwise take action as defined in this section, except the municipal court. ...

Section 5. Buckley Municipal Code Section 12.04.040 is hereby amended as follows:

**12.04.040 Additional timing considerations.**

(1) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission ~~or board of adjustment.~~

(2) If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications. Said request shall contain the location and nature of the proposed action. The applicant shall be required to pay the city's actual cost of evaluating said request. The planning **director** shall prepare an estimate of the proposed cost of review and that amount shall be paid prior to the commencement of the review process.

Section 6. Buckley Municipal Code Section 12.04.340 BMC is hereby amended as follows:

**BMC 12.04.340 Appeals.**

Appeals of SEPA determinations shall be in accordance with 20.01 BMC.

Section 7. Buckley Municipal Code Section 12.08.140 BMC is hereby amended as follows:

**12.08.140 Exception – Public agency and utility.**

(1) If the application of this title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical areas permit application; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the ~~board of adjustment~~ decision maker identified in BMC 20.01 based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (4) of this section.

(3) ~~Board of adjustment~~ Review. The ~~board of adjustment~~ decision maker identified in BMC 20.01 shall review the application and planning director's recommendation and conduct a public hearing pursuant to the provisions of BMC Title 20. The ~~board of adjustment~~ decision maker shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

(a) There is no other practical alternative to the proposed development with less impact on the critical areas; and

(b) The application of this title would unreasonably restrict the ability to provide utility services to the public; and

(c) The proposal meets the criteria in BMC [12.08.280](#), Review criteria.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 01-12 § 2, 2012; Ord. 21-05 § 2, 2005).

Section 8. Buckley Municipal Code Section 12.08.260 BMC is hereby amended as follows:

**12.08.260 Innovative mitigation.**

(1) The city may encourage, facilitate, and approve innovative mitigation projects for Class III and Class IV wetlands. Class II wetlands may be considered after review and approval by the ~~board of adjustment~~ *decision maker identified in BMC 20.01*. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

(a) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;

(b) The applicant(s) demonstrates the organizational and fiscal capability to act cooperatively; (c) The applicant(s) demonstrates that long-term management of the habitat area will be provided; and

(d) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(2) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

(3) Any innovative mitigation project being considered under this section shall be required to satisfy the mitigation plan and monitoring requirements of BMC [12.08.250](#).

Section 9. Buckley Municipal Code Section 12.08.320 BMC is hereby amended as follows:

**12.08.320 Appeals.**

(1) Any person may appeal ~~to the board of adjustment~~ *to the decision maker identified in Chapter 20.01 BMC* a final administrative order, requirement, permit decision, condition and/or determination made; provided, that such appeal shall be filed in writing to the city planning department within 14 calendar days of the date of the written decision, order, requirement or determination is posted.

(2) For the purpose of this section, the city's order, requirement, permit decision or determination shall not be deemed final until it is reduced to writing and mailed to the applicant.

(3) The appeal shall be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law. (Ord. 21-05 § 2, 2005).

Section 10. Buckley Municipal Code Section 12.08.330(1&4) BMC is hereby amended as follows:

### **12.08.330 Variances.**

(1) An applicant who seeks a modification from the requirements of this title may pursue a variance by filing a written application with the city. Upon the filing of a proper application, the ~~board of adjustment~~ decision maker shall conduct a duly noticed public hearing and review the application and make a finding that the request meets or fails to meet the variance criteria.

(2) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

(a) There are special conditions and circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties; and

(b) The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of special circumstances is denied the property in question; and

(c) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and

(d) Granting the variance will not violate, abrogate, or ignore the goals, objectives or policies of this title or other adopted city land use policies or the comprehensive plan.

(3) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title.

(4) Additional Considerations for Frequently Flooded Areas. In addition to consideration of the review criteria in subsection (2) of this section, the ~~board of adjustment~~ decision maker shall also consider the following for activities proposed within a frequently flooded area:

(a) The danger to life and property due to flooding, erosion damage, or materials swept onto other lands during flood events; and

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the proposed use; and

(c) The importance of the services provided by the proposed use to the community; and

(d) The necessity to the proposed use of a waterfront location, where applicable, and the availability of alternative locations for the proposed use that are not subject to flooding or erosion damage; and

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles; and

(f) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(g) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

(6) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 01-12 § 5, 2012; Ord. 21-05 § 2, 2005).

Section 11. Buckley Municipal Code Section 14.30.920 BMC is hereby amended as follows:

**14.30.920 Appeals.**

Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, ~~to the board of adjustment~~ subject to the provisions of BMC 20.01.260.

Section 12. Buckley Municipal Code Section 19.12.145 BMC is hereby amended as follows:

**19.12.145 Conditional use.**

“Conditional use” means a use listed among those classified in any given zone but permitted to locate in that zone only after a review by the ~~board of adjustment~~ or appropriate city-designated official and the granting of a conditional use permit imposing such design and performance standards as will make the use compatible with other permitted uses in the same vicinity and assure against imposing excessive demands upon public utilities.

Section 13. Buckley Municipal Code Section 19.12.155 BMC is hereby amended as follows:

**19.12.155 Dwelling, caretaker’s.**

“Caretaker’s dwelling” means a dwelling unit, located inside a principal building on the lot, which is designed for and used exclusively by the property owner or by another person and his or her family, employed to provide security or custodial services for a commercial or industrial use on the same lot. Caretaker’s dwelling units may be allowed by the ~~board of adjustment~~ or appropriate city-designated official subject to the performance regulations for conditional use permits, and to the following additional requirements:

- (1) The dwelling unit shall only be allowed as an accessory use to the principal use(s) permitted in the zone;
- (2) The dwelling unit shall be located inside the principal building on the property. The appearance of the building shall remain commercial or industrial;
- (3) That portion of the principal building containing the dwelling unit shall observe a minimum setback of eight feet from property lines;
- (4) Only one caretaker’s dwelling shall be allowed on the site or lot;
- (5) The caretaker’s dwelling shall be removed upon a change in the use or ownership of the property.

Section 14. Buckley Municipal Code Section 19.20.010(2) is hereby amended as follows:

**19.20.010 Requirements common to all zones.**

- (1) Residential Zones.
  - (a) The maximum height for structures shall be 30 feet except as modified by other sections of this code.

(b) Normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the 30-foot building height limit to a maximum height of 45 feet.

(c) Except for ham radio antennas regulated under BMC [19.22.060](#), the height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC [19.25.100\(2\)\(k\)](#) and other applicable provisions of this code.

(d) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.

(e) Duplex Dwellings. Each duplex dwelling shall have an attached or detached two-car enclosed garage per unit.

(f) Standards for street and utility construction shall be as specified under Chapter [17.08](#) BMC and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

## (2) Commercial Zones.

(a) The maximum height for structures shall be 35 feet except as modified by other sections of this code; provided, said height limitation may be increased for steeples, clock towers and other similar noncommercial unoccupied structures upon application to and approval by the ~~board of adjustment~~ *decision-maker in accordance with BMC 20.01 (commercial height modification), who may.* ~~The board may grant, deny or modify the application as it deems appropriate.~~ The proposed structure should be in size proportional to the structure to which it is associated and should be so constructed as to minimize blockage of panoramic views from public properties and rights-of-way, and preserve the scenic view from adjacent properties. The applicant shall pay the same application fee as is charged for a code variance.

(b) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC [19.25.100\(2\)\(k\)](#) and other applicable provisions of this code.

(c) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.

(d) Standards for street and utility construction shall be as specified under Chapter [17.08](#) BMC and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

(e) Mixed-Use Dwelling Units. Dwelling units are allowed above commercial uses in the HC, CC, and NMU zones.

## (3) Public “P” and Sensitive “S” Zones.

(a) The maximum height of all structures shall be 35 feet.

(i) In the S zone, this measurement shall be as required by the shoreline master program or Chapter [173-27](#) WAC, from existing grade to the highest point of the structure as defined in Chapter [173-27](#) WAC, regardless of location of the shoreline jurisdiction.

(ii) In the P zone normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the maximum height if the projection does not interfere with views to Mt. Rainier or to the river.

(iii) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, Chapter 19.25 BMC.

Section 15. Buckley Municipal Code Section 19.30.120 is hereby amended as follows:

**19.30.120 Residential (R-6,000, R-8,000, R-20,000) zone signs.**

Signs in the residential (R-6,000, R-8,000, R-20,000) zones are limited as follows:

(1) One residential identification sign or nameplate not exceeding two square feet of sign surface area is allowed on each individual residence. Nameplates or identification signs may be mounted on the residence or accessory structure to the residence and may be illuminated by indirect lighting only.

(2) One sign identifying nonresidential uses, not exceeding 16 square feet of sign surface area, is allowed within the R-20,000 residential agricultural zone to advertise the sale of products raised on the premises. The maximum height for the sign shall be six feet. The sign may be monument or mounted on a wall, fence or other structure.

(3) Approved home occupations as defined in BMC 19.12.245 are limited to one wall sign not exceeding six square feet of sign surface area. Only one such sign shall be allowed on the premises and may be illuminated by indirect lighting only.

(4) ~~Approved c~~Conditional uses ~~that have received approval through the board of adjustment or designated official~~ are limited to one advertising sign not exceeding 16 square feet. The maximum height for the sign shall be five feet. The sign may be monument or mounted on a wall, fence or other structure.

(5) Two permanent residential development identification signs not exceeding 16 square feet of sign surface area for each sign are allowed per subdivision. The maximum height for the sign shall be eight feet. The sign may be monument or mounted on a wall, fence or other structure.

Section 16. Buckley Municipal Code Section 19.30.140(3 & 3.k) is hereby amended as follows:

**19.30.140 Off-premises signs.**

Off-premises signs shall not be allowed except as herein provided:

(1) Community Bulletin Board Signs. Signs of a public service nature which are nonadvertising or nonpromotional and are used for providing public service information to the community by public service clubs or other nonprofit organizations may be allowed within any zone, subject to the following:

(a) Any such sign to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation.

(b) Approval of the owner, submitted in writing, of the property on which the sign is to be placed.

(c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver.

(d) Size. Shall be no larger than necessary to clearly inform the public. Community bulletin board signs shall not exceed 40 square feet of sign surface area.

(e) Illumination. May be internally or indirectly illuminated.

(2) Off-Premises Public Service Signs. Informational signs of a public service nature meant to guide or direct pedestrian or vehicular traffic to uses such as places of worship, schools, city

parks, fire stations, police stations, municipal buildings, public libraries, community centers, points of interest and other similar noncommercial uses (B.P.O.E., Kiwanis, etc.) may be allowed within any zone subject to the following:

(a) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Washington Department of Transportation.

(b) Approval of the owner, submitted in writing to the city, of the property on which the sign is to be placed.

(c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver, whether private drives or public rights-of-way.

(d) Size. Shall not be larger than four square feet of sign surface area. Consolidated city identification and/or community-service-club-type signs shall not exceed 32 square feet of sign surface area. Business identification directional signs on dead-end streets shall meet the following criteria: all units will have letters six inches in height, dark color on a light background, not longer than four feet per unit and meeting corner visibility requirements; details to be approved by the planning director for each installation.

(e) Illumination. May be indirectly illuminated.

(3) Off-Premises Permanent Directional Signs. To provide business identification for sites located in areas not directly abutting a minor or principal arterial, such as on dead-ends or on local access or collector streets, one off-premises sign may be approved by the ~~board of adjustment~~ or designated official in a commercial or industrial zone subject to the following:

(a) The subject business has demonstrated a need for off-premises signage and how the sign will benefit the community; and

(b) If more than one business in an immediate area has a similar need for an off-premises sign, all must be consolidated and identified on the same sign; and

(c) The location of the off-premises sign is at the nearest intersection of the closest principal or minor arterial on which the subject property is located; and

(d) The off-premises sign is located in a commercial or industrial district; and

(e) The square footage of the off-premises sign has been included in the subject property's total square footage sign allowance. The combined area total of property's signage plus the proposed sign does not exceed the total allowable signage for the subject property; and

(f) The proposed off-premises sign meets the sign requirements of the zone where located; and

(g) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation; and

(h) Approval of the owner of the property, submitted in writing, on which the sign is to be placed; and

(i) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver; and

(j) Illumination. May be internally or indirectly illuminated; however, the sign shall not be an electronic messaging display center, or have any changeable message or flashing lights; and

(k) All other conditions that the ~~board of adjustment~~ or designated official determines are reasonable and serve the interest of public health, safety and welfare.

Section 17. Buckley Municipal Code Section , 19.30.210 BMC is hereby amended as follows:

**19.30.210 Variances.**

The ~~board of adjustment or~~ designated official may grant a variance from the provisions of this chapter subject to the variance provisions of BMC 19.40.030.

Section 18. Buckley Municipal Code Section 19.30.220 BMC is hereby amended as follows:

**19.30.220 Planning director’s authority.**

The planning director is authorized and directed to be the administrator of this chapter, in consultation with the building official, to make necessary interpretations subject to appeal to the ~~board of adjustment or~~ designated official, and the planning director is designated to process all required permits. The planning director is authorized and directed to enforce all provisions of this chapter with the building official’s consultation for consideration of the structural integrity of proposed and existing signs.

Buckley Municipal Code Section 19.30.270 BMC is hereby amended as follows:

**19.30.270 Appeal from sign code administrative interpretations and decisions.**

Sign code administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, ~~to the board of adjustment subject to the provisions of *in accordance with* BMC 20.01.260. Every appeal shall be filed with the planning director within 21 days after the date the decision of the matter being appealed became final. A notice of appeal shall be delivered to the planning department by mail or personal delivery, and must be received by 5:00 p.m. on the last business day of the appeal period, with the required appeal fee.~~

Section 19. Buckley Municipal Code Section 19.32.030 is hereby amended as follows:

**19.32.030 Types distinguished.**

(1) Type A Home Occupation. A home occupation where the residents use their dwelling as a place of work.

(2) Type B Home Occupation. A home occupation where the residents use their dwelling as a place of work but that exceeds the standards of the Type A home occupation. Type B home occupations shall be permitted only as conditional uses and with approval by the ~~board of adjustment or~~ designated official subject to the provisions of Chapter 19.40 BMC and BMC 19.32.060. Type B home occupations shall be filed on forms provided by and in the manner set forth by the planning department, with application fee paid as established by adopted fee schedule.

Section 20. Buckley Municipal Code Section , 19.32.060 BMC is hereby amended as follows:

**19.32.060 Criteria for approval – Type B or “major” home occupation.**

(1) Type B or “major” home occupations shall be allowed subject to a conditional use permit, and shall meet the requirements set forth in BMC 19.32.050(5) through (14) and the following requirements:

- (a) The business, including operations and storage, shall occupy no more than half of the residential gross floor area, which includes all accessory buildings. If the business occupies an accessory building, the square footage of that building shall not be larger than the primary residential building;
  - (b) The building official shall determine the maximum occupancy load of the structure(s) in which the home occupation is proposed; ~~the board of adjustment or~~ designated official shall consider this number along with all other pertinent facts and comments in determining the maximum number of employees allowed on the premises to work in the home occupation at any one time;
  - (c) The subject property shall not be altered except to install screening or buffers or to provide parking for no more than four vehicles. No parking in yards and buffers shall be allowed;
  - (d) No more than three vehicles shall be parked on the property as a result of the business at any one time;
  - (e) On-site sales shall be limited to items produced on the premises or incidental to the major home occupation;
  - (f) Traffic generated by the home occupation shall not noticeably affect the residential character of the neighborhood; and
  - (g) Accessways shall be accessible to emergency vehicles.
- (2) Major home occupations include, but are not limited to, the following:
- (a) Home occupations that do not meet all of the criteria in BMC 19.32.050, Criteria for approval – Type A or “minor” home occupation;
  - (b) Auto repairing, vehicle detailing, and vehicle, boat or trailer painting and major appliance repair;
  - (c) Commercial welding and machine shops.

Section 21. Buckley Municipal Code Section 19.32.090(2.b) BMC is hereby amended as follows:

**19.32.090 Revocation of permits.1**

- (1) Upon determination that a violation of decision criteria or a condition of approval may have occurred, the director shall notify the owner of a home occupation of the alleged violation and of the revocation procedures if the business is not brought into conformance within 30 calendar days.
- (2) If the business is not brought into conformance within the time specified above:
  - (a) If the business is a Type A “minor” home occupation, the planning department will refer nonconformance to the city administrator for revocation of the business license pursuant to BMC 6.04.160; or
  - (b) If the business is a Type B “major” home occupation, the planning department will refer the nonconformance to the ~~board of adjustment or~~ designated official for public hearing and revocation of the conditional use permit pursuant to BMC 19.40.190.
- (3) When a permit or business license is revoked, the director shall notify the owner by certified mail of the revocation and the findings upon which revocation is based.
- (4) Nothing in this section shall be construed as limiting other code enforcement remedies available to the city.

Section 22. Buckley Municipal Code Chapter 19.40 is hereby amended as follows:

**19.40.010 Purpose.**

This chapter is intended to detail the procedures and responsibilities of the ~~board of adjustment~~ or designated official in the processing, consideration and issuance of variances and conditional use permits. In regard to variances, this chapter shall apply to claims that the provisions of the zoning code are unduly prohibitive to reasonable use of property as intended by this title. In regards to conditional use permits, this chapter shall apply after application for consideration and issuance of a conditional use permit subject to the conditions set forth in this title.

**19.40.020 Variances and authority to grant.**

Upon the filing of a proper application, the ~~board of adjustment~~ *designated official* shall have the authority, subject to provisions of this chapter, to grant, upon such conditions as it may determine, variances from required lot width, depth or area; required front, side or rear yards; required height of buildings, fences and structures; maximum floor area, impervious surface coverage and signage; and required parking. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a variance, unless a variance for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto. Further, the authority to grant a variance does not extend to use regulations set forth in this title. No variance shall permit a use not permitted in the zone district applicable to a property.

**19.40.030 Required findings to grant variance.**

Each determination granting a variance shall be supported by written findings showing specifically wherein all of the following conditions exist:

- (1) Because of unusual conditions applicable to the subject property, including size, shape, topography, location, natural features or surroundings, which were not created by the owner or applicant, the strict application of this title would deprive the property of rights and privileges enjoyed by other properties in the vicinity and zone in which the subject property is located; and
- (2) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
- (3) That the granting of such variance will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements of such vicinity and/or zone in which the property is located; and
- (4) The literal interpretation and strict application of the applicable provisions or requirements of this title could cause undue and unnecessary hardship; and
- (5) The requested variance would be consistent with the spirit and purpose of the zoning code and adopted land use policies or comprehensive plan, as applicable.

**19.40.040 Conditions on variance approvals.**

The ~~board of adjustment~~ or designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area, and to assure that the proposed variance fully meets the criteria set forth in BMC 19.40.030.

**19.40.050 Public hearing required for variance.**

Before the ~~board of adjustment~~ or designated official may grant, amend or deny any application for a variance, the ~~board of adjustment~~ or designated official shall conduct a duly noticed public hearing. Upon completion of the hearing, the board or official shall grant, amend with conditions or deny with findings the variance application in accordance with the provisions of this chapter.

**19.40.060 Expiration of variance grant.**

Any variance granted by the ~~board of adjustment~~ or designated official shall become null and void if not exercised within the time specified in such variance or, if no time is specified, within one year of the date of approval of such variance. A variance shall be deemed exercised and remain in full force and effect when a building permit has been issued and substantial construction accomplished in reliance upon said permit. If such variance is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure for variance prescribed in this chapter.

**19.40.070 Extension of time for variance permit.**

Upon written request by a property owner or his/her authorized representative, also designated in writing, prior to the date of variance expiration, and following consideration at a public meeting, the ~~board of adjustment~~ or designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the variance which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare

**19.40.080 Cancellation of a variance.**

A valid variance granted by the ~~board of adjustment~~ or designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by the variance by means of a written request to the planning director. The variance shall then become null and void 15 calendar days thereafter.

**19.40.090 Revocation of a variance.**

Following a public hearing, the ~~board of adjustment~~ or designated official may revoke or add additional conditions to any variance issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or his/her designated representative and considered in the granting of the variance;
- (2) That the variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (3) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

**19.40.100 Posting of performance bonds.**

Notwithstanding the provisions of BMC 19.40.040, whenever a variance is granted upon any condition or limitation, the person seeking the variance may be required to furnish security in the form of money, letter of credit from a bank, or a surety bond in an amount fixed by the ~~board of~~ which variance is granted. Every such bond shall be a performance bond payable to the city and

shall be conditional upon compliance with the conditions and limitations upon which such variance is granted.

**19.40.110 Appeals to superior court of variance determination.**

~~A final action of the board of adjustment or designated official under this chapter with respect to a variance shall be deemed final and conclusive unless, within 21 calendar days of the issuance of the decision being appealed, the applicant, property owner or any other person aggrieved or adversely affected by said decision files an appeal with the Pierce County superior court and properly serves it on all necessary parties. Said appeal shall be governed by the provisions of the Land Use Petition Act, Chapter 347, Sections 701—719, Laws of 1995, 1995 Regular Session.~~ appealed in accordance with BMC 20.01.

**19.40.120 Conditional use permits and authority to grant.**

Certain uses require a special degree of control due to unusual effects or characteristics peculiar to them, or because of size, location, type of equipment used, or demands upon public facilities resulting from such use. Therefore, the ~~board of adjustment or~~ designated official shall have the authority subject to provisions of this chapter to grant, upon such conditions as they may determine, a conditional use permit as may be in harmony with the scope and purpose of this title and zone district in which the use is to be located, and the goals, objectives and policies of the Buckley comprehensive plan. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a conditional use permit, unless a conditional use permit for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto.

**19.40.130 Required findings to grant conditional use permit.**

Each conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions exist:

- (1) That the use for which the conditional use permit is applied is specified by this title as being conditionally permitted within and is consistent with the description and purpose of the zone district in which the property is located;
- (2) That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- (3) That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and, further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- (4) That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features, as are required by this title or as needed in the opinion of the ~~board of adjustment or~~ designated official, and are properly provided to be compatible and harmonious with adjacent and nearby uses;
- (5) That the granting of such conditional use permit will not be contrary to the adopted Buckley comprehensive plan, or to the objectives of any code, ordinance, regulation, specifications or plan in effect to implement the comprehensive plan.

**19.40.140 Conditions on conditional use permit approvals.**

The ~~board of adjustment or~~ designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area and to assure that the proposed use or activity fully meets the findings set forth in BMC 19.40.130. No conditional use permit shall require as a condition the dedication of land for any purpose not reasonably related to the use of property for which the conditional use permit is requested, nor posting of a bond to guarantee installation of public improvements not reasonably related to the use of property for which the conditional use permit is requested.

**19.40.150 Public hearing required for conditional use permit.**

Before the ~~board of adjustment or~~ designated official may grant, amend or deny an application for a conditional use permit, the board shall conduct a duly noticed public hearing. Upon completion of the hearing, the commission or official shall grant, amend or deny the conditional use permit application in accordance with the provisions of this chapter.

**19.40.160 Expiration of conditional use permit.**

Any conditional use permit granted by the ~~board of adjustment or~~ designated official shall become null and void if not exercised within the time specified in such permit or, if no time is specified, within one year of the date of approval of such permit. A conditional use permit shall be deemed exercised and remain in full force and effect when a building permit has been issued and substantial construction accomplished in reliance upon the conditional use permit. If such permit is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure prescribed herein for the establishment of a conditionally permitted use.

**19.40.170 Extension of time of conditional use permit.**

Upon written request by a property owner or his/her authorized representative prior to the date of conditional use permit expiration, and following consideration at a public meeting, the ~~board of adjustment or~~ designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the permit which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare.

**19.40.180 Cancellation of a conditional use permit.**

A valid conditional use permit granted by the ~~board of adjustment or~~ designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by conditional use permit by means of a written request to the planning **director**. The permit shall then become null and void within 30 calendar days thereafter.

**19.40.190 Revocation of a conditional use permit.**

Following a public hearing, the ~~board of adjustment or~~ designated official may revoke or add additional conditions to any conditional use permit issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or designated representative and considered in the granting of the permit;

- (2) That the use for which such approval is granted is not being exercised;
- (3) That the use for which such approval is granted has ceased to exist or has been suspended for one year or more;
- (4) That the conditional use permit granted is being, or recently has been, exercised contrary to the terms of conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (5) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

**19.40.200 Posting of performance bonds.**

Notwithstanding the provisions of BMC 19.40.140, whenever a conditional use permit is granted upon any condition or limitation, the person seeking the conditional use permit may be required to furnish security in the form of money or a surety bond in an amount fixed by the ~~board of adjustment~~ or designated official to ensure compliance with the conditions and limitations upon which permit is granted. Every such bond shall be a performance bond and shall be in a form approved by the city attorney, shall be payable to the city and shall be conditioned upon compliance with the conditions and limitations upon which such permit is required.

**19.40.210 Appeals ~~to superior court~~ on conditional use permit determination.**

~~A final decision of the board of adjustment or designated official under this chapter with respect to a conditional use permit shall be deemed final and conclusive unless, within 21 calendar days of the issuance of the decision being appealed, the applicant, property owner or any other person aggrieved or adversely affected by said decision files an appeal with the Pierce County superior court and properly serves it on all necessary parties. Said appeal shall be governed by the provisions of the Land Use Petition Act, Chapter 347, Sections 701—719, Laws of 1995, 1995 Regular Session, filed in accordance with BMC 20.01.~~

Section 23. Buckley Municipal Code Section 19.42.030 is hereby amended as follows:

**19.42.030 ~~Buckley's hearings board~~Hearing Examiner.**

The Buckley ~~board of adjustment~~, hereinafter known as "~~the hearings board,~~" hearing examiner is vested with authority to:

- (1) Approve, approve with conditions, or deny shoreline variance and conditional use permits after considering the findings and recommendations of the administrator; the decision shall be forwarded to the Department of Ecology for final action; provided, that any decisions of this matter made by the city may be further appealed to the State Shorelines Hearings Board as provided in the Act.
- (2) Conduct public hearings ~~and forward a recommendation to the city council~~ on appeals of the administrator's actions, interpretations, and decisions related to Chapter 19.42 BMC.
- (3) At the discretion of the city, require any applicant granted a shoreline permit to post a bond or other acceptable security with the city conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions until such time as the project is completed. Such bonds or securities shall be approved as to form by the city attorney.

Section 24. Buckley Municipal Code Section 20.01.020 BMC is hereby amended as follows:

**20.01.020 Definitions.**

The following definitions shall apply throughout this title: ...

~~(6) “City of Buckley board of adjustment” means a board appointed by the city council and created to hear and decide appeals of orders, decisions or determinations made by the staff and to authorize upon appeal in specific cases such variances from the provision of the zoning ordinance or other land use regulatory ordinances as the city may adopt.~~

...

~~(24) “Type B process” means a process which involves an application that is subject to standards that require the exercise of certain discretion and about which there may be a considerable public interest.~~

“Type A-3 process” means an application that is subject to objective and subjective standards that require the exercise of discretion about nontechnical issues and about which may be a public interest.

...

Section 25. Buckley Municipal Code Section 20.01.030 is amended as follows:

**BMC 20.01.030 Procedures for processing development project permits.**  
 (1) Project Permit Application Framework. The project permit application framework is set forth in Tables 1 and 2 as follows:

Table 1: Application Process

Procedural Steps	Application Process					
	Type “A” Actions Administrative Type “B” Actions Board of Adjustment (BOA)			Type “C” Actions Planning Commission, Hearing Examiner and City Council		
	Type A-1	Type A-2	Type <del>B-A-3</del>	Type C-1	Type C-2	Type C-3
Recommendation by:	N/A	N/A	<del>Staff</del> <u>Planning Commission</u>	Staff	Staff	Staff
Notice of application	No	Yes	Yes	Yes	Yes	No
Open Record Public Hearing	See Note 1	See Note 1	Yes <del>Board of Adjustment</del> <u>Planning Commission</u>	Yes Planning Commission	Yes Hearing Examiner	No
Final Decision-Making Body	Staff	Staff	<del>Board of Adjustment</del> <u>Director</u>	City Council	Hearing Examiner/City Council <del>3</del> <u>2</u>	City Council
Appeal Authority	<del>BOA</del> <u>Hearing examiner</u>	<del>BOA/City Council</del> <u>Hearing examiner 2</u>	<del>City Council</del> <u>4</u> <u>Hearing Examiner</u>	Pierce County Superior Court <del>5</del> <u>3</u>	Pierce County Superior Court	Pierce County Superior Court

1. Note: Public hearing only on appeal of an administrative decision, open record hearing before ~~board of adjustment~~ hearing examiner.
2. Note: Appeal to council ~~hearing examiner~~ on appeals of SEPA determinations.
3. Note: Council is the final decision-making body for mobile home parks, planned unit developments, all rezones, and major PUD amendments.
4. Note: ~~Board of adjustment decisions on variances must be appealed directly to Pierce County superior court.~~
5. Note: Comprehensive plan amendments, shoreline permits, and BMC land use text amendment, and area-wide rezones are potentially appealable to the Growth Management Hearings Board or Shoreline Hearings Board.
4. No assurances are made as to the accuracy of Table 1 in identifying the appellate forum with jurisdiction to hear appeals of final City decisions. It is the responsibility of the appellant to determine where to file appeals of final city decisions.

Table 2: Application Type

Type A-1 administrative w/o notice; Type A-2 administrative w/ notice; *Type A-3 administrative hearing and recommendation from the planning commission*; ~~Type B quasi-judicial, public hearing w/ board of adjustment~~; Type C-1 legislative or quasi-judicial w/ ~~city council~~ *recommendation from a commission*; Type C-2 quasi-judicial w/ hearing examiner; Type C-3 ministerial or administrative w/ city council.

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
<b>Title 12, Environment</b>						
<b>12.08</b>	<b>Critical areas conditional use</b>		<b>B</b>			
12.08.130	Critical area exemption	A-1				
<b>12.08.140</b>	<b>Critical area exception – public agency and utility</b>		<b>B</b>		<u>C-2</u>	
<b>12.08.330</b>	<b>Critical areas variance</b>		<b>B</b>		<u>C-2</u>	
<b>12.08.260</b>	<b>Innovative wetland mitigation</b>		<b>B</b>		<u>C-2</u>	
12.08.150	Reasonable use exception				C-2	
12.04	SEPA determination	A-2				
19.42.050	Shoreline exemption	A-1				
	Shoreline substantial development permit	A-2				
<b>19.42.120</b>	<b>Shoreline conditional use permit</b>		<b>B</b>		<u>C-2</u>	
<b>19.42.120</b>	<b>Shoreline variance</b>		<b>B</b>		<u>C-2</u>	
12.08.130	Wetland exemptions	A-1				
12.11.040	Floodplain development permit	A-1				
<b>Title 16, Buildings and Construction</b>						

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
16.06.020	Building and other construction permits	A-1				
16.80.010	Canopies	A-1				
16.12.070	Fences	A-1				
<b>16.12.070</b>	<b>Fence variances</b>	<b>A-23</b>	<b>B</b>			
<del>15.04.050</del>	<del>Gas fitter's permit</del>	<del>A-1</del>				
16.01.010	Land disturbing activity permit	A-1				
16.40.040	Mobile home installation permit	A-1				
14.06.140	Sewer permit	A-1				
13.08.010	Sidewalk construction permit	A-1				
16.10.010	Temporary dwelling permit	A-1				
14.06.390	Wastewater discharge (also from state DOE)	A-1				
<b>Title 17, Design and Construction Standards, and Development Guidelines and Public Works Standards (DGS)</b>						
17.08	Acceptance of public improvement					C-3
17.08.050	Dedication of public easements and rights-of-way					C-3
DGS 4.07(C)	Frontage improvement exceptions					C-3
DGS 4.21	Light standards	A-1				
	Modification of public improvement requirement					C-3
<b>DGS 2.02</b>	<b>Major variances of Development Guidelines and Public Works Standards</b>		<b>B</b>			<b>C-3</b>
DGS 2.02	Minor variances of Development Guidelines and Public Works Standards	A-1				
DGS 2.01	Right-of-way use permits	A-1				
	<b>Title 18, Subdivisions</b>					
18.34.040	Boundary line adjustment	A-1				
18.34.040	Boundary line adjustment, non-conforming lots					C-3
	<b>Binding site plans</b>					
18.36.060	Preliminary binding site plans				C-2	
18.36.090	Final binding site plan amendments					C-3
18.36.070	Adjustments (minor) to binding site plan approved plans	A-1			C-2	

Title and Chapter	Permit	Permit Type				
		A	<b>B</b>	C-1	C-2	C-3
18.36.070	Adjustments (not minor) to binding site plan approved plans				C-2	
	<b>Short subdivisions (short plats)</b>					
18.32.070	Preliminary short subdivisions	A-2				
18.32.080	Final short subdivisions					C-3
18.32.100	Amendments (minor) to unrecorded short plats	A-1				
18.32.100	Amendments to approved or recorded final short plats					C-3
	Subdivisions (long plats)					
18.16.020	Preliminary subdivisions (long plats)				C-2	
18.16.030	Final subdivisions					C-3
	Amendments to approved (not recorded) preliminary plats				C-2	
RCW 58.17.215	Amendments to approved (recorded) final plats (alteration of recorded plat)					C-3
<b>Title 19, Zoning</b>						
19.06.030	Comprehensive plan amendments, legislative			C-1		
19.06.030	Comprehensive plan amendments, quasi-judicial				C-2	
<u>19.20.010</u>	<u>Commercial height modification</u>	<u>A-2</u>	<del>B</del>			
19.40.120	Conditional use permits, zoning code		<b>B</b>		<u>C-2</u>	
19.50.070, 19.51.050	Design review	A-1				
19.52	Development code text amendments			C-1		
19.32.050	Home occupation Type A with minor impact	A-1				
<b>19.32.060, 19.40</b>	<b>Home occupation Type B with potential impacts</b>		<b>B</b>		<u>C-2</u>	
19.34.020	Mobile home parks				C-2 <sup>ec</sup>	
<u>19.30.140</u>	<u>Off-premises directional signs</u>	<u>A-1</u>	<del>B</del>			
19.30.060	Sign permit	A-1				
19.33	Site plan reviews (commercial/industrial)				C-2	
19.33.120	Site plans amendment commercial/industrial/multifamily				C-2	

Title and Chapter	Permit	Permit Type				
		A	B	C-1	C-2	C-3
19.33.110	Site plans – technical adjustment	A-1				
19.52	Rezoning, legislative			C-1		
19.52	Rezoning, site-specific			<del>C-1</del>	<u>C-2</u>	
	Planned unit developments (PUDs)				C-2 <sup>ec</sup>	
	• PUD amendments				C-2 <sup>ec</sup>	
	• PUD amendments – technical adjustment	A-1				
	Telecommunication facilities (collocation)	A-1				
<b>19.25.110</b>	<b><u>Telecommunication facilities waiver</u></b>				<del>C-2</del>	<u>C-3</u>
<b>19.25.110</b>	<b><u>Telecommunication facilities CUP</u></b>				C-2	
<b>19.25.110</b>	<b><u>Telecommunication facilities variance</u></b>				C-2	
<b>19.30.210</b>	<b>Variations, sign code</b>	A-3	B			
<b>19.40.020</b>	<b>Variations, zoning <del>and sign code</del></b>		B		<u>C-2</u>	

(2) Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications shall be subject to Type A-1 and Type A-2 process (administrative), ~~Type B process (board of adjustment)~~, Type C-1 (planning commission/city council), Type C-2 and Type C-3 process (hearing examiner/city council) as defined in BMC 20.01.020. As defined in subsection (1) of this section:

(2) Type of development permit applications. For permit processing, development shall be subject to one of the following permit processes:

(a) Administrative decisions.

(i) A Type A-1 ~~shall be~~ is an administrative process that does not require public notice;

(ii) A Type A-2 process ~~shall be~~ is an administrative process that requires public notice;

(iii) A Type A-3 process is an administrative process that requires public review with the planning commission;

**(e) A Type B is a quasi-judicial process that requires a public hearing (the decision-making body for a Type B process shall be the board of adjustment);**

~~(d)~~ Type C-1 processes are legislative or quasi-judicial and require public hearings. The (the decision-making body for Type C-1 processes shall be the city council.

~~(c)~~ Type C-2 are quasi-judicial and require public hearings (the decision-making body shall be the hearing examiner, except the city council shall be the decision-making body for mobile home parks, planned unit developments and major planned unit development amendments);

~~(d)~~ Type C-3 are largely ministerial or administrative and do not require a public hearing (the decision-making body for Type C-3 is the city council).

(3) Exemptions from the requirements of project permit application processing as defined in this chapter are contained in BMC 20.01.070.

Section 26. Buckley Municipal Code Section 20.01.050 is hereby amended as follows:

**20.01.050 Projects requiring two or more permit applications.**

(1) Optional Consolidation. A project that involves two or more permit applications may be subject to a consolidated project permit review process as established in this chapter. The applicant may determine whether the applications shall be processed collectively or individually. If the applications are processed under the individual procedure option, the highest type procedure must be processed prior to the subsequent lower procedure.

(2) Consolidated Permit Processing. When the project is reviewed under the consolidated procedure option, the highest procedure required for any part of the project application must be applied. All project permits being reviewed through the consolidated permit review process shall be included in the following:

(a) Determination of completeness;

(b) Notice of application;

(c) Notice of final decision;

(d) Single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination. (RCW 36.70B.060(5))

(3) Public Hearing for Consolidated Applications. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing.

(4) Decision-Maker(s). Applications processed in accordance with subsection (2) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s) to the extent consistent with state law. The order of decision making authority, from highest to lowest is City Council, hearing examiner, and director ~~hearing examiner is the highest, followed by the board of adjustment, and then the director.~~

(5) Consolidation with the Other Government Agencies. The city is also authorized to consolidate project review with the permit procedures of other government agencies. Joint public hearings with other agencies shall be processed according to BMC 20.01.060.

Section 27. Buckley Municipal Code Section 20.01.090 BMC is hereby amended as follows:

**20.01.090 Administrative approvals subject to notice (Type A-2) – Process overview.**

(1) Administrative Decision. The director shall approve, approve with conditions, or deny (with or without prejudice) all Type A-2 permit applications, subject to the determination of

completeness, the notice of application, the notice of decision and appeal requirements of this section.

(2) Notice of Application. Within 14 working days after the date an application subject to a Type A-2 process was accepted as complete, the review authority shall issue a public notice of the pending review consistent with the requirements of BMC 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(3) Additional Posting. The review authority may also require notices to be posted in conspicuous places visible on the site or in the vicinity of a proposed action at least 10 working days before the close of the comment period.

(4) Staff Report. The director shall issue written findings and conclusions supporting Type A-2 decisions.

(5) Appeal Procedures. An applicant or other party of record who may be aggrieved by the administrative decision of a Type A-2 application may appeal the decision to the following:

(a) Appeals for Type A-2 administrative decisions will be to the ~~board of adjustment~~, hearing examiner ~~except for appeals of a SEPA determination of nonsignificance;~~

(b) Appeals for Type A-2 SEPA determinations of nonsignificance will be to the city council; provided, that in either case a written appeal is filed in conformance with BMC 20.01.260.

(6) ~~Public Hearing on Appeal. If a Type A-2 decision is appealed for other than a SEPA determination of nonsignificance, an open record public hearing will be held before the board of adjustment consistent with the requirements of BMC 20.01.210.~~

Section 28. Buckley Municipal Code Section 20.01.100 BMC is hereby amended as follows:

**20.01.100 ~~Type B and Type C-1 and C-2~~ procedures – Quasi-judicial decisions – Process overview.**

(1) Determination of Completeness and Notice of Application. All ~~Type B~~, C-1 and C-2 procedures require the issuance of determination of completeness and notice of application consistent with BMC 20.01.130 and 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(2) Staff Report. At least five days before a public hearing for all types of procedures, the director shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the city's development code as amended, adopted plans and regulations. The staff report shall include proposed findings, conclusions and recommendations for disposition of the development application. The staff report shall include and consider all written public comments on the application.

(3) Recommendations. ~~For Type B procedures, staff makes recommendations to the board of adjustment. For Type C-1 procedures, staff makes recommendations to the planning commission, which then makes its own recommendation to the city council. For Type C-2 procedures, the staff makes its recommendations to the hearing examiner. For Type C-3 procedures, staff makes~~

~~recommendations to the city council.~~ Staff recommends to decision makers and recommending bodies, as appropriate, after reviewing the application and applicable codes.

(4) Required Findings. ~~The planning commission, hearing examiner or board of adjustment shall recommend to approve~~ The decision maker or recommending body may approve or recommend to approve a proposed project if it first makes the following findings and conclusions:

- (a) The project is consistent with the Buckley comprehensive plan and meets the requirements and intent of the Buckley Municipal Code;
- (b) The project is not detrimental to the public health, safety and welfare;
- (c) The project adequately mitigates impacts identified under Chapter 12.04 BMC, State Environmental Policy Act, and Chapter 12.08 BMC, Critical Areas – General Provisions, as amended.

(5) Public Hearing. A public hearing on quasi-judicial decisions shall be held for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development code, adopted plans and regulations.

(6) Notice of Public Hearing. At least ~~15~~ 14 days before the date of the hearing for an application subject to Type B or Types C-1 and C-2 review, the review authority shall issue a public notice. Notice of the public hearing shall be in accordance with BMC 20.01.190.

(7) Notice of Public Meeting or Workshop. Notice shall be given consistent with Chapter 1.28 BMC and RCW 36.70A.035, Public participation – Notice provisions.

(8) Quasi-Judicial Action. Upon receiving a recommendation, the ~~board of adjustment (for Type B)~~ decision maker shall hold an open record public hearing and make a decision on a recommendation, including consideration of any appeals of the recommendation. For Type C-1 decisions, the planning commission after receiving a staff review of the application shall hold an open record public hearing and forward a recommendation to the city council for decision. For Type C-2 decisions, the hearing examiner after receiving a staff review of the application shall hold an open record public hearing and make a decision on the application.

(9) Quasi-Judicial Decisions. A quasi-judicial decision on a recommendation following an open record public hearing shall include one of the following actions:

- (a) Approve as recommended;
- (b) Approve with additional conditions;
- (c) Modify, with or without the applicant's concurrence; provided, that the modifications do not:
  - (i) Enlarge the area or scope of the project;
  - (ii) Increase the density or proposed building size; or
  - (iii) Significantly increase adverse environmental impacts as determined by the responsible official;
- (d) Deny without prejudice (reapplication or resubmittal is permitted);
- (e) Deny with prejudice (reapplication or resubmittal is not allowed for one year); or
- (f) Remand for further proceedings and/or evidentiary hearing in accordance with BMC 20.01.240.

Section 29. Buckley Municipal Code Section 20.01.200 BMC is hereby amended as follows:

**20.01.200 Notice of public meetings.**

Public meetings of the planning commission, ~~board of adjustment~~, *hearing examiner*, and city council shall comply with applicable notice requirements of the Open Public Meetings Act, Chapter 42.30 RCW, Chapter 1.28 BMC, and, if applicable, notice shall be given consistent with RCW 36.70A.035, Public participation – Notice provisions.

Section 30. Buckley Municipal Code Section 20.01.220 BMC is hereby amended as follows:

**20.01.220 Procedures for public meetings.**

The city council, planning commission and ~~board of adjustment~~ *hearing examiner* may adopt by majority vote the process for their respective public meetings. Generally a public meeting does not involve formal public comment. A public meeting is not a public hearing. The city council, planning commission and the ~~board of adjustment~~ *hearing examiner* may, but are not required to, provide for written comments or questions prior to a meeting to assist that body in its actions at its public meeting and may allow comments at a public meeting.

Section 31. Buckley Municipal Code Section 20.01.240 BMC is hereby amended as follows:

**20.01.240 Remand.**

In the event the ~~board of adjustment~~, the hearing examiner or the city council determines that the public hearing record, the record on appeal or the administrative decision is insufficient or otherwise flawed, the council may remand the matter back to the planning commission, ~~board of adjustment~~ or director, as applicable, to correct the deficiencies. Remand is available upon a showing of:

- (1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;
- (2) Unlawfulness of procedure or of decision-making process; or
- (3) Mistake of material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

Section 32. Buckley Municipal Code Section 20.01.250 BMC is hereby amended as follows:

**20.01.250 Final decision.**

- (1) Notice of Final Decision.
  - (a) The city shall provide a notice of decision that also includes a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for administrative appeal, if any.
  - (b) The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.
  - (c) Notice of the decision shall be provided to the public as set forth in BMC 20.01.190. The director shall issue a notice of final decision within 120 days of the issuance of the determination of completeness pursuant to BMC 20.01.130; provided, that the time period for

issuance of a notice of final decision on a preliminary plat shall be 90 days, for a final plat 30 days, and a short plat 30 days. The notice of decision shall include a statement of the threshold determination made under Chapter 12.04 BMC as amended and the procedures for an appeal (if any) of the permit decision or recommendation. Said notice shall also state that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The department shall provide notice of the decision to the Pierce County assessor.

(d) In calculating the 120-day period for issuance of the notice of final decision, the following periods shall be excluded:

(i) Any period during which the applicant has been requested by the director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines that the additional information provided satisfies the request for information, or 14 days after the date the additional information is provided to the city;

(ii) If the director determines that the information submitted is insufficient, the applicant shall be informed of the particular insufficiencies and the procedures set forth in subsection (1)(d)(i) of this section for calculating the exclusion period shall apply;

(iii) Any period during which an environmental impact statement (EIS) is being prepared pursuant to Chapter 43.21C RCW. The time period for preparation of an EIS shall be governed by Chapter 43.21C RCW;

(iv) Any period for consideration and issuance of a decision for administrative appeals of project permits, which shall be not more than 90 days for open record appeals and 60 days for closed record appeals, unless a longer period is agreed to by the director and the applicant;

(v) Any remand to the planning commission, ~~board of adjustment~~, hearing examiner or director;

(vi) Any period during which the applicant has failed to pay any applicable fees or deposits after having been notified of such by the city shall be excluded from the time period in this chapter;

(vii) Any extension of time mutually agreed to by the director and the applicant.

(f) If the city is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

(g) The time limits established in this title do not apply if a project permit application:

(i) Requires an amendment to the comprehensive plan or a development regulation;

(ii) Requires siting approval of an essential public facility as provided in RCW 36.70A.200; or

(iii) Is substantially revised by the applicant, in which case the time period shall start from the date that a determination of completeness for the revised application is issued by the director pursuant to BMC 20.01.130 and RCW 36.70B.070.

(2) Effective Date. The final decision of the council, hearing examiner or hearing body shall be effective on the date stated in the decision, motion, resolution, or ordinance; provided, that the appeal periods shall be calculated from the date of issuance of the land use decision, as provided in the Land Use Petition Act, Chapter 36.70C RCW. For the purposes of this chapter, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the city, or, if not mailed, the date on which the city provides notice that a written decision is publicly available;

- (b) If the land use decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the city council passes the ordinance or resolution;
- (c) If neither subsection (2)(a) nor (b) of this section applies, the date the decision is entered into the public record.

Section 33. Buckley Municipal Code Section 20.01.260 BMC is hereby amended as follows:

**20.01.260 Appeals.**

(1) Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative ~~Type A-1 and Type A-2~~ decisions may be appealed to the appeal authority designated in BMC 20.01.030, Table 1, by applicants or parties of record, ~~to the board of adjustment~~ within 14 days from the date of the decision.

(a) SEPA determinations of nonsignificance may shall be appealed to the city council hearing examiner; provided that an appeal of a determination of significance shall follow Chapter 43.21C RCW and Chapter 197-11 WAC.

(2) Consolidated Public Hearing. All appeals of SEPA threshold determinations made pursuant to Chapter 12.04 BMC as amended (other than determinations of significance) shall be considered together with the decision on the project application in a single, consolidated public hearing.

~~(3) Appeal of Board of adjustment Decisions. Except for variances, Final decisions of the board of adjustment may be appealed, by parties of record from the hearing, to the city council Pierce County Superior Court.~~

~~(4) Procedures for Appeals. Appeals shall be conducted in accordance with the board of adjustment's and city council's rules of procedure of the hearing body and shall serve to provide argument and guidance for the body's decision.~~

(a) The parties to an appeal of a planning commission recommendation may submit timely written statements or arguments.

~~(5) Filing. A notice of appeal shall be delivered to the planning department by mail or personal delivery, and must be received by 5:00 4:00 p.m. on the last business day of the appeal period, with the required appeal fee.~~

(a) SEPA appeals shall be filed with the Responsible Official within seven days after the end of the SEPA determination's comment period ends.

(b) Every permit appeal shall be filed with the director within 21 days after the date of the decision of the matter being appealed became final. Every appeal shall be filed with the director within 21 days after the date of the decision of the matter being appealed became final.

~~(6) Contents of the Notice of Appeal to the Board of adjustment or the City Council. The notice of appeal shall contain a concise statement identifying:~~

- (a) The decision being appealed;
- (b) The name and address of the appellant and his/her interest(s) in the matter;
- (c) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
- (d) The desired outcome or changes to the decision; and
- (e) The appeal fee.

~~(7) Board of adjustment or City Council Hearing body actions on Appeal. The decision following an appeal hearing shall include one of the following actions:~~

- (a) Grant the appeal in whole or in part.
- (b) Deny the appeal in whole or in part.
- (c) Remand for further proceedings and/or evidentiary hearing in accordance with BMC 20.01.240.
- (d) The hearing body may receive new evidence in addition to that contained in the record on appeal only if it relates to the validity of the underlying decision at the time the decision was made and is needed to decide disputed issues regarding:
  - (i) The proper constitution of or disqualification grounds pertaining to the decision-maker.
  - (ii) The use of unlawful procedure.

~~(8Z) Judicial Appeal. Appeals from the final decisions of the board of adjustment, the hearing examiner or the city council on Type B, Types C-1, C-2 and C-3 procedures and appeals from any other final decisions specifically authorized (subject to timely exhaustion of all administrative remedies) shall be made to Pierce County superior court within 21 calendar days of the date the decision or the date the action becomes final, as defined in BMC 20.01.250(2), unless another time period is established by state law or local ordinance.~~

~~(a) All appeals must conform with procedures set forth in Chapter 36.70C RCW. BMC 20.01.030 identifies final decisions appealable to superior court. In lieu of superior court, some appeals of final decisions are required by state law to be filed in other forums. The appellant bears the responsibility of filing an appeal in the proper forum and no assurances are made as to the accuracy of the forums designated for appeal in Table 1, BMC 20.01.030.~~

~~(ba) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.~~

~~(eb) Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.~~

Section 34. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 35. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 36. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 26<sup>th</sup> day of January, 2016.

---

MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

PUBLISHED:

EFFECTIVE:



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321  
360-829-1921 Ext. 7801 ♦ Fax 360-829-9363 ♦

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**DEVELOPMENT CODE AMENDMENT ORDINANCE**  
**Hearing Examiner / Board of Adjustment**

**I. INTRODUCTION**

**To.** Mayor Pat Johnson  
Members of the City of Buckley City Council

**From.** Chair Chuck Helmer  
Members of the City of Buckley Planning Commission

**Subject.** Commission Advisory Report: Findings, Conclusions, and Recommendation

**Hearing.** Monday, January 11, 2016  
City of Buckley Multi-Purpose Center  
811 Main Street  
Buckley, WA 98321

**Issues.**

1. Permit decision makers for permits originally given to the BOA.
2. Development of a new administrative permit type.
3. Development of new decision makers in Table 2 of BMC 20.01.030.

**Background.** On June 2, 2015, the city council passed Ordinance 12-15, which removes the Board of Adjustment (BOA) from hearing zoning conditional use permits (CUPs), and removes the city council from hearing State Environmental Policy Act appeals. In their place, this ordinance assigns the city's hearing examiner as the hearing body. (The sections of code cited in Ord. 12-15 are: BMC 12.04.340(3) and BMC 20.10.030.)

The city council conducted a public hearing on the interim ordinance on July 28, 2015, as required by law. The planning commission met to discuss the topic July 6, August 10, 2015, and will develop code and conduct a public hearing on the permanent regulations.

As the planning commission began to develop code, a question was sent to the city attorney. The answer voiced a preference to remove the board in favor of the hearing examiner system. A question was sent to the council as to whether the commission should expand its review. No written response was submitted other than the council meeting minutes, which indicated the commission should expand its review.

Understanding the direction to be to remove the board from the code, the commission completed its review and the ordinance received environmental review under the State Environmental Policy Act.

**II. BASIC INFORMATION**

**A. Application Information**

- 1. **Source of Request.**  
City council.
  
- 2. **Staff Contact.**  
City Planner Kathy Thompson

**B. Ordinance Description.**

- 1. **The proposed ordinance will do the following:**  
Remove the City of Buckley Board of Adjustment from the city in favor of the Hearing Examiner. A few minor reviews the BOA currently review were examined by the planning commission with an administrative decision by the planning director.
  
- 2. **Ordinance Will Affect.**  
Processes for permits that require a public hearing.

**C. Noticing Information**

- 1. **Public Participation and/or Notification.**  
Public Hearing Notice and proposal description published in the Wednesday, December 16, 2015 legal section of The Enumclaw Courier Herald, posted on the City Bulletin Boards.

The SEPA threshold determination of non-significance (DNS) was issued December 2, 2015, with a comment period ending December 16, 2015.

The required 60-day notice (request for expedited review) was received by the state Department of Commerce December 3, 2015, under material identification number 21870. Expedited review was granted December 18, 2015.

- 2. The city attorney reviewed the ordinance and submitted comments which were inserted to the hearing draft.

**III. ORDINANCE INFORMATION**

**A. Buckley Municipal Code.**

The following citations need to be amended:

1. BMC 1.12.020(1)	10. 12.04.340	19. 19.30.270	27. 20.01.050
2. 2.34 – repeal	11. 14.30.920	20. 19.32.030	28. 20.01.090(5.a & 6)
3. 8.18.030(1)	12. 19.12.145	21. 19.32.060	29. 20.01.100(3&4&8)
4. 12.04.020 (5)	13. 19.12.155	22. 19.32.090(2.b)	30. 20.01.200
5. 12.04.040	14. 19.20.010(2)	23. 19.40	31. 20.01.220
6. 12.08.140	15. 19.30.120	24. 19.42.030	32. 20.01.240 and
7. 12.08.260	16. 19.30.140(3 & 3.k)	25. 20.01.020(6&24)	33. 20.01.250(1.d.v)
8. 12.08.320	17. 19.30.210	26. 20.01.030	34. 20.01.260
9. 12.08.330(1&4)	18. 19.30.220		

1. **Existing Code**  
The code identifies the BOA in multiple sections of code.
  2. **Proposed Code.**  
Changes the responsibility from the BOA to either staff or the hearing examiner for decision-making or recommendations to other decision makers.
- B. Titles 1, 2, and 8, Code enforcement, BOA, and Health & sanitation.**
1. **Existing Code**  
Proposed Ordinance Sections 1, 2, and 3.  
BMC 1.12.020 and 8.18.030 mention the BOA as an entity to determine health issues as a reason for code enforcement. Chapter 2.34 creates the BOA.
  2. **Proposed Code.**  
The proposed ordinance moves these responsibilities in Titles 1 and 8 to the city administrator or designee. Chapter 2.34 is to be repealed.
- C. Title 12, Environment.**
1. **Existing Code**  
Proposed Ordinance Sections 4, 5, 6, 7, 8, 9, & 10.  
The BOA is listed in SEPA code (BMC 12.04) as an agency of the city, a board to which SEPA determinations may go, and the hearing body for SEPA appeals.  
  
The BOA is listed in critical area codes (BMC 12.08) as a decision maker for exceptions, innovative mitigation, appeals, and variances.
  2. **Proposed Code.**  
The proposal defers to the tables in BMC 20.01.030 to determine the decision maker and hearing body for various permits and actions.
- D. Title 14, Water & sewers.**
1. **Existing Code**  
Proposed Ordinance Section 11.  
The BOA is identified as the hearing body for appeals of administrative decision.
  2. **Proposed Code.**  
The proposal defers to 20.01.
- E. Title 19, zoning.**
1. **Existing Code**  
Proposed Ordinance Sections 12 through 23.  
The BOA is mentioned in definitions, as an approving body for permits (signs, variances, conditional use permits, major home occupations, shoreline variances, and shoreline conditional use permits).  
  
A new decision-maker line is required for BMC 19.20.010(2.a.). The BOA is stated

as the decision maker for granting approvals for commercial building or structure height increases over 35 feet; this is not yet listed on BMC 20.01.030 Table 2. The proposal lists it under BMC 19.20.010.

BMC 19.30.270, BMC 19.40.110, and BMC 19.40.210 repeat much of what is in BMC 20.01.260. The proposal removes the repetition in favor of BMC 20.01.260.

BMC 19.42 is the procedural chapter for the city's Shoreline Master Program (SMP). The SMP will need to be updated to reflect the changes in this ordinance.

**2. Proposed Code.**

The proposal removes the BOA and defers to 20.01 for identifying the decision makers and/or appeal bodies.

The proposal removes redundancies between BMC 19.30.270, BMC 19.40.110, BMC 19.40.210, and BMC 20.01.260.

The proposed code removes the BOA as hearing body. Because the SMP was adopted in 2013 and references this chapter, the SMP must be re-adopted.

**F. Title 20.**

**1. Existing Code**

The BOA is mentioned throughout the chapter and is given the role of decision maker in all "Type B" permits.

**a. Definitions.**

Proposed Ordinance Section 24.

The existing code contains two definitions: one for the BOA and one for "Type B" permits that will no longer be needed. The proposed code removes these two definitions.

Because the planning commission wanted to treat permit reviews similarly, it recommends conducting hearings on processes or permits that required hearings before the BOA. In the BOA's place the planning commission agreed to be the hearing body for permit reviews that especially require sensitivity to the comp plan, such as sign and fence variances. For this type of review, an administrative Type A-3 permit was developed and added into the definitions section. The planning commission will be the hearing body for fence and sign variances.

**b. BMC 20.01.030 Table 1, Application process.**

Proposed Ordinance Section 25.

Type B permits are shown in the two tables of BMC 20.01.030. These references will no longer be needed. The proposed ordinance removes the Type B column.

Existing Table 1 contains some confusing items about SEPA appeals, rezones, and shoreline permits. The proposal removes the confusion.

Table 1 has several notes at its end, which are revised as follows:

1. Administrative permits have no hearing except when appealed, and that appeal will be heard by the hearing examiner.
2. The former Note 2 is no longer needed and is replaced by the former Note 3.
3. The former Note 3 is now Note 2; Note 4 is no longer needed, so the new Note 3 is the former Note 5.
4. A new Note 4 is added to clarify that appellate forum is not as simple as shown on any table and the appellant is responsible to determine where to file appeals and within what timeframe.

**c. BMC 20.01.030 Table 2, Application type.**

Proposed Ordinance Section 25.

Existing Table 2 contains some permits that are not included in code and does not contain some permits that are included in code.

Existing Table 2: The applications are organized by code titles, beginning with Title 12, Environment; all responsibilities in this title that were the BOA's are designated the hearing examiner's responsibilities. The BOA is designated the hearing body for critical areas conditional use permits, but the conditional use permit is not mentioned in that title except as an example of a development permit. The proposal removes this reference from Table 2.

BOA is currently shown as a decision maker in deciding major variances to the Public Works Design and Construction Standards (DGS). The planning commission indicated that because the council will need to accept the public works development for which the variance was requested, the council should decide the variance.

In Title 16 fence variances are removed from the BOA and given to the director after a hearing before and a recommendation from the planning commission (Type A-3 permit).

The proposal adds an A-3 column in place of the Type B permitting column, changes the BOA to the hearing examiner for appeals of administrative decisions, and adds room for former BOA responsibilities to be moved to hearing examiner or the planning commission.

Conditional uses permits under zoning (including major home occupations) and variances are proposed to be given to the hearing examiner. The sign variances are mentioned on the table together with variances from the entire zoning code; the proposal separates them and sign variances are added as an A-3 permit.

**d. Table 2 has several notes at its end under subsection (2).**

- a. Describes the types of administrative processes. The existing code described administrative permits under subsections 2.a and 2.b; the proposal places all administrative permits under 2.a.
- b. Existing 2.c, Type B permits is removed; the new 2.b describes the C-1 process,

which is the existing 2.d.

- c. Existing 2.e, the new 2.c, Type C-2 permits are discussed.
- d. Existing note 2.f. is the new 2.d.

**e. 20.01.050 Projects requiring two or more permit applications**

Proposed Ordinance Section 26.

This section identifies decision makers in subsection 4. The proposal alters this section slightly for clarity.

**f. 20.01.090 Administrative approvals subject to notice (Type A-2) – Process overview.**

Proposed Ordinance Section 27.

Subsection 5 discusses appeal hearing bodies for Type 2 permits. It names the hearing body rather than deferring to the table.

Subsection 6 discusses appeals to A-2 decisions other than a SEPA determination.

The proposal names the hearing body as the hearing examiner; the commission may remove this in favor of language that defers to Table 1 (e.g. "...in accordance with BMC 20.01.030 Table 1...")

Subsection 6 is no longer needed and the proposal removes it.

**g. 20.01.100 Type C-1 and C-2 procedures – Quasi-judicial decisions – Process overview.**

Proposed Ordinance Section 28.

The existing code includes Type B permits; the proposed ordinance removes Type B permits.

**h. 20.01.200 Notice of public meetings.  
20.01.220 Procedures for public meetings.  
20.01.240 Remand.  
20.01.250 Final decision.**

Proposed Ordinance Sections 29, 30, 31, and 32.

The proposal removes the BOA and inserts the hearing examiner.

**i. 20.01.260 Appeals.**

Proposed Ordinance Section 33.

This section of code has eight subsections:

1. The proposal identifies appeals of administrative decisions to the hearing examiner.
2. No change.
3. Deleted.
4. Now the new 3, removes Board of Adjustment in favor of "the hearing body."
5. Now the new 4, changes the time for delivering notices of appeal to the closing of the planning office of 4 p.m. and adds:
  - a. clarification on filing SEPA appeals.

- b. clarification on filing with the director after permits become final.
- 6. Now the new 5, generalizes notices of appeal for all appeals, rather than just to the BOA.
- 7. Now the new 6, generalizes to hearing bodies, rather than just to the city council.
- 8. Now the new 7, removes the existing subsection and refers to the table in 20.01.030. It also discusses other forums for appeals, which is restated in Section 030.

#### IV. ORDINANCE CRITERIA REVIEW

All development ordinances must conform to the city's comprehensive plan; development ordinances should be internally consistent with the rest of the city's codes.

##### A. Buckley Municipal Code

###### Fact.

##### 1.a 19.52.010 Determination – Final action.

In determining what, if any, amendments to this title are to be adopted, the city council shall give due consideration to the proper relationship of such amendments to the comprehensive plan and to this entire title, it being the intent to retain the integrity and validity of the zoning districts herein described, and to avoid any isolated spot zoning changes in the zoning map. Any amendments adopted by the council may be modified from the form in which they were advertised within the limits necessary to relate properly such amendment or amendments to this title. Final action on such modifications shall be subject to review and report of the planning commission prior to final passage by the council. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 652 Art. 9(12), 1961).

##### 1.b Finding.

The comprehensive plan is discussed in Section IV.B of this report.

The relationship to the title and to the code are addressed in Section II of this report.

The change of hearing bodies for individual permit is not likely to affect the zoning districts.

##### 2.a 19.52.020 Priority of first application.

No application for a change of zoning of any lot, parcel or portion thereof shall be considered by the council within one year of the final action of the council upon a prior application covering any of the same described land. This provision, however, shall not impair the right of the council to propose any amendment of change in the boundaries of any of the districts in this title on its own motion. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 652 Art. 9(12), 1961).

##### 2.b Finding.

This section is not applicable.

##### 3.a 19.52.030 Conditional rezone – Approval.

As a condition precedent to the rezone of any parcel of land, the council may require that within a specified period of time an acceptable building permit application must be submitted for the use intended in the rezone application, and that failure to submit said building permit application and to start construction within a specified period of

time will result in the rezone automatically becoming null and void and the property reverting back to the zone that existed at the time of the rezone application; provided, the council may extend any time limits set forth in the ordinance granting a conditional rezone if the application for extension is timely made, good cause is shown why the extension is necessary, and the proposed use remains consistent with the comprehensive plan as in effect at the time the extension is requested. Good cause shall relate to factors beyond the control of the applicant and inadequate financing shall not be considered a good cause. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 1, 1984).

**3.b Finding.**

This section is not applicable.

**4.a 19.52.040 Conditional rezone – Concomitant agreement.**

The council may, as a condition of any rezone, require the execution of an agreement concomitant to the rezone ordinance. The concomitant agreement may include such conditions as the council deems necessary in order to neutralize the impact of the proposed property usage upon public services, including streets, parks, utilities and other public services. The concomitant agreement may include both on-site and off-site improvements. The failure to comply with the terms of said concomitant agreement shall result in the rezone immediately becoming null and void and the property reverting to the zone that existed at the time of the rezone application. In the alternative, the council may require specific performance of the agreement. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 2, 1984).

**4.b Finding.**

This section is not applicable.

**5.a 19.52.050 Conditional rezone – Indication on zoning maps.**

If a rezone is conditionally granted under the provisions of this chapter, then the zoning map shall reflect the rezone subject to compliance with certain conditions, and the date for compliance shall be written upon the zoning map. A certified copy of the conditional rezone ordinance and the concomitant agreement, if applicable, shall be filed for record with the Pierce County auditor. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 3, 1984).

**5.b Finding.**

This section is not applicable.

**B. Buckley Comprehensive Plan**

**1.a Policy 3.1.2**

The city's regulations should provide the following to enhance sustainable economic development:

- a. Economic disincentives for vacant buildings.
- b. Overlay district design standards for each commercial area, one for east/west-bound SR 410, one for the area adjacent to northeast-bound SR 410, and one for the historic district.
- c. Procedures that are as streamlined as possible and still follow state requirements.

**1.b Finding.**

The proposal does not address economic disincentives for vacant buildings.  
The proposal does not address design standards.  
The proposal attempts to enable “streamlining” by clarification and reduction in redundancy.

**2.a Goal 3.7**

*Ensure regulation balances economic growth with the quality of life and the environment.*

**2.b Finding.**

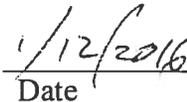
While not directly addressing economy or the quality of life, the proposal should enhance the economy and quality of life by providing a definite and easier-to-follow decision making process.

**V. CONCLUSIONS & STAFF RECOMMENDATION.**

Based upon a review of facts and findings the commission determined that the ordinance is consistent with the comprehensive plan and code, and recommends the city council approve the proposed changes.



\_\_\_\_\_  
Chuck Helmer, Planning Commission Chair



\_\_\_\_\_  
Date



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>ORD No. __-16: Amending Misc Code Sections - Annual Housecleaning</b>  Cost Impact: N/A Fund Source: N/A Timeline: N/A	<b>Agenda Date: January 26, 2016</b>		<b>AB16-012</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson	X	
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
	Muni Court – Jessica Cash		
<b>Attachments:</b> Commission Advisory Report and Recommendation			
SUMMARY STATEMENT:  <p style="text-align: center;"><b>AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS 1.01.060(2), 19.12.010, 19.12.180, 19.12.580, 19.20.060(2.a.i.B), AND 20.01.070(2) BMC CLARIFYING AND CORRECTING THE CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.</b></p> <p>The planning commission conducted a hearing on this ordinance January 11, 2016, and recommended approval the same night.</p> <p>The ordinance was reviewed by the city attorney before the public hearing.</p> <p>The ordinance was sent to the Department of Commerce and the city complies with the Growth Management Act in relation to this proposal; the ordinance can be adopted immediately.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
<b>RECOMMENDED ACTION: Motion to Approve ORD No. __-16 Amending Misc Code Sections - Annual Housecleaning.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

ORDINANCE NO. \_\_\_\_ - 16

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS 1.01.060(2), 19.12.010, 19.12.180, 19.12.580, 19.20.060(2.a.i.B), AND 20.01.070(2) BMC CLARIFYING AND CORRECTING THE CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the municipal code is a system of regulations; and

WHEREAS, with use the regulations show certain contradictions or ambiguity; and

WHEREAS, the planning commission desires the city's regulations based on the comprehensive plan to be clear; and

WHEREAS, staff compiled a list of issues for review; and

WHEREAS, environmental review was conducted on the proposed correction ordinance and a determination of non-significance was issued December 2, 2015; and

WHEREAS, the request for expedited review in lieu of the required 60-day notice was sent December 8, 2015, to the Washington State Department of Commerce informing it of the proposed change in development regulations; and

WHEREAS, the notice was received December 8, 2015, under Material ID Number 21888; and

WHEREAS, the expedited review was granted January 3, 2016; and

WHEREAS, the planning commission conducted a public hearing on this proposal on January 11, 2016;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1.     Definitions generally. BMC 1.01.060(2) is amended as follows:

**1.01.060 Definitions...** (2) "Council" means the city council of the city of Buckley, Washington. "All its members" or "all ~~councilmen~~ *council members*" means the total number of ~~councilmen~~ *council members* provided by the general laws of the state of Washington;...

Section 2.     Zoning definitions.

**19.12.010 Definitions generally.**

*In addition to the definitions in Sections 1.01.060 and 1.01.070 BMC, the* ~~The~~ definitions set forth in this chapter are to be used in construing the Buckley zoning code. ~~When not inconsistent with the context, words used in the present tense include the future, the singular numbers shall include the plural, the word “shall” is mandatory, and the word “may” is permissive.~~

Section 3. Definitions. BMC 19.12.180, Dwelling, two-family or duplex, is amended as follows:

**19.12.180 Dwelling, two-family or duplex.**

“Two-family dwelling” or “duplex” means a building designed or used by two families for residential purposes; provided two townhome units are not considered a duplex.

Section 4. Definitions. BMC 19.12.580, yard, is amended as follows:

**19.12.580 Yard.**

“Yard” *or* “setback” means any open space on the same lot with a building or building group lying between the building or building group and the nearest lot line.

Section 5. Density calculation. BMC 19.20.060(2.a.i.B), HDR high density residential zone section (2)(B) is amended as follows:

...(B) For duplex dwellings, the minimum lot area per dwelling unit shall be ~~12,900~~ 6,450 square feet. ...

Section 6. Legislative Rezones. BMC 20.01.070 is amended as follows:

**20.01.070 Exemptions from project permit application processing.**

...

(2) Legislative Actions. The following Type ~~C-2~~ C-1 decisions are legislative, and are not subject to the procedures in this chapter:

- (a) City of Buckley comprehensive plan adoption and amendments;
- (b) Municipal code amendments (zoning code text, development regulations and zoning district amendments);
- (c) Area-wide rezones to implement city policies contained within the city of Buckley comprehensive plan and any amendments thereto;
- (d) Annexations; and
- (e) All other master land use and utility plans and amendments thereto.

The administrative procedures for the legislative decisions specified in this section are set forth coordinately by adopted ordinances. Nothing in this chapter or the permit processing procedures shall limit the authority of the city to make changes to the Buckley comprehensive plan, as part of an annual revision process, or to the city’s development regulations, or to undertake any other legislative actions.

...

Section 7. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City Administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 8. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 9. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this

day of

, 2016.

\_\_\_\_\_  
MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, JOANNE STARR

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

PUBLISHED:

BY

EFFECTIVE:

  
\_\_\_\_\_  
Phil A. Olbrechts

\_\_\_\_\_



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321  
360-829-1921 Ext. 7801 ♦ Fax 360-829-9363 ♦

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**DEVELOPMENT CODE AMENDMENT ORDINANCE**  
**Corrections Ordinance**

**I. INTRODUCTION**

**To.** Mayor Pat Johnson  
Members of the City of Buckley City Council

**From.** Chair Chuck Helmer  
Members of the City of Buckley Planning Commission

**Subject.** Advisory Report:  
Findings, Conclusions, and Recommendation

**Hearing.** Monday, January 11, 2016  
City of Buckley Multi-Purpose Center  
811 Main Street  
Buckley, WA 98321

**Issues.** None.

**II. BASIC INFORMATION**

**A. Application Information**

**1. Source of Request.**

Staff.

**2. Staff Contact.**

City Planner Kathy Thompson.

**B. Ordinance Description.**

**1. The proposed ordinance will do the following:**

**Citation**

**Reason**

**BMC:**

1.01.060 **Definitions.** Revised language in Title 1 from “councilmen” to “council members.” Add language in Title 19 that references the definitions in Title 1.

19.12.010 **Duplex v. townhome.** Certain zones disallow duplexes, but allow townhomes. When density calculations allow only two units, what is to be done?

**Staff recommendation:** allow duplexes in all residential and mixed use zones that allow townhomes.

19.12.580 **Yard v. setbacks.** Yards are defined similarly to lot lines, except that yards include open space, which requires the area to be “free and clear of buildings, structures ... remain open and unobstructed from the ground to the sky...” Setbacks are not defined.

**Staff recommendation:** Add to the “yard” definition the phrase “or setback”.

19.20.060 **Duplex.** States the lot area requirement for duplexes is 12,900 per dwelling unit (du). Intent is 12,900 per dwelling set. All other zones calculate

according to du.

**Staff recommendation:** Reduce duplex du calculation to match townhomes. This would allow small lots to build duplexes.

20.01.070 **Legislative rezones.** Through an oversight, legislative rezones were given a C-2 designation in the text of this section. It should be C-1.

## 2. Ordinance Will Affect.

Interpretation for the above terms and processes concerning them.

## C. Noticing Information

### 1. Public Participation and/or Notification.

Public Hearing Notice and proposal description published in the Wednesday, December 16, 2015, legal section of The Enumclaw Courier Herald, posted on the City Bulletin Boards.

The SEPA threshold determination of non-significance (DNS) was issued December 2, 2015, with a comment period ending December 16, 2015.

The expedited review was granted in lieu of the required 60-day notice by the state Department of Commerce December January 3, 2016.

## III. ORDINANCE INFORMATION

### A. Existing Code

#### 1. Definitions generally

Proposed Ordinance Section 1.

**Facts.** Definitions and purpose statements provide the means to interpret the code. Certain words must mean certain things for the code to make sense. When one term is defined two different ways in two separate chapters or titles they must be interpreted somehow to work together, but the terms' meanings become muddled. It is best for the code to define one term once and refer to that term unless special circumstances require that a different meaning be applied.

Municipal codes usually define their common terms in the very first chapter of the very first title. These terms are applicable throughout the code and do not need to be repeated. In this city terms are defined in Section 1.01.060 BMC, and the way grammar is to be interpreted is explained in Section 1.01.070 BMC; these terms don't need to be repeated.

#### 1.01.060 Definitions.

The following words and phrases whenever used in the ordinances of the city shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- (1) "City" or "town" means the city of Buckley, Washington, or the area within the territorial limits of the city of Buckley, Washington, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provisions;
- (2) "Council" means the city council of the city of Buckley, Washington. "All its members"

or “all councilmen” means the total number of councilmen provided by the general laws of the state of Washington;

- (3) “County” means the county of Pierce;
- (4) “Day” means a calendar day unless otherwise stated in ordinance;
- (5) “Law” denotes applicable federal law, the Constitution and statutes of the state of Washington, the ordinances of the city of Buckley, Washington, and, when appropriate, any and all rules and regulations which may be promulgated thereunder;
- (6) “May” means the action is acceptable, provided it conforms to the provisions of this code;
- (7) “Must” and “shall” each mean a mandate; the action must be done;
- (8) “Oath” includes affirmation;
- (9) Office. The use of the title of any officer, employee, or any office or ordinance means such officer, employee, office, or ordinance of Buckley unless otherwise specifically designated;
- (10) “Ordinance” means a law of the city; provided, that a temporary or special law, administrative action, order or directive may be in the form of a resolution;
- (11) “Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government unit however designated, association, club, company, corporation, business, trust, or the manager, lessee, agent, servant, officer or employee of any of them;
- (12) “State” means the state of Washington;
- (13) “Street” includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state;
- (14) “Written” includes printed, typewritten, mimeographed or multigraphed. (Ord. 09-12 § 2, 2012; Ord. 905 § 1, 1976; Ord. 823 § 6, 1971).

#### **1.01.070 Grammatical interpretation.**

The following grammatical rules shall apply in-the ordinances of the city:

- (1) Gender. Any gender includes the other genders;
- (2) Singular and Plural. The singular number includes the plural and the plural includes the singular;
- (3) Tenses. Words used in the present tense include the past and the future tenses and vice versa;
- (4) Use of Words and Phrases. Words and phrases not specifically defined shall be construed according to the context and approved usage of the language. (Ord. 823 § 7, 1971).

The planning commission reviewed the issue and recommended two things:

- a. That the definitions in BMC 1.01.060 should be changed to make “councilman” to “council member.”

**1.01.060 Definitions....** (2) “Council” means the city council of the city of Buckley, Washington. “All its members” or “all ~~councilmen~~ *council members*” means the total number of ~~councilmen~~ *council members* provided by the general laws of the state of Washington;...

*Discussion: While the code is opened, the commissioners wanted to update the term “council men” to “council members” to remove any semblance of sexism.*

b. That the language in BMC 19.12 direct the reader to Title 1 definitions to reduce the possibility of duplication and/or contradiction.

2. Proposed Ordinance Section 2.

**Facts. See above.**

**19.12.010 Definitions generally.**

*In addition to the definitions in Sections 1.01.060 and 1.01.070 BMC, the* The definitions set forth in this chapter are to be used in construing the Buckley zoning code. ~~When not inconsistent with the context, words used in the present tense include the future, the singular numbers shall include the plural, the word “shall” is mandatory, and the word “may” is permissive.~~

*Discussion: Sections 1.01.060 and 1.01.070 BMC address tense, singular numbers, and the terms “shall” and “may.” Because Title 1 addresses and is applicable to all of the code, including it a second time in this title is unnecessary.*

3. **Townhomes v. duplexes**

Proposed Ordinance Section 3.

**Facts.** The code defines townhomes in BMC 19.12.175, duplexes in 19.12.180, and then describes townhomes within the use matrix in BMC 19.20.130.

**19.12.175 Dwelling, townhome.**

“Townhome dwelling” means a type of attached multifamily dwelling in a row of at least two, but not more than four, such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

**19.12.180 Dwelling, two-family or duplex.**

“Two-family dwelling” or “duplex” means a building designed or used by two families for residential purposes.

On the matrix: “Townhomes (four and fewer attached units with ground floor entrances)”

The issue with this is that when a neighborhood-mixed-use-zoned property allows only two townhomes on a property, the prohibition against duplexes is the most stringent regulation and would likely stand. Also, the verbiage in the matrix is duplicative; the information is also given in the definition.



**Findings.** A townhome by its definition are to be side-by-side with separate entrances; duplexes can be one-on-top-of-another with a common entrance or separate entrances.

The planning commission considered three options:

- a. Make both townhomes and duplexes permitted in the NMU zone (the one zone that disallows duplexes).
- b. Place a note above the “P” in “duplex” in the NMU zone that the duplex units are to be in the form of townhomes, OR  
Disallow duplexes and place a note above the “P” in “townhomes” in the NMU zone that indicates two units won’t be considered a duplex.
- c. Write in the townhome definition that two townhome units are not considered duplex units.

The planning commission chose “c” above and recommends the following:

**19.12.180 Dwelling, two-family or duplex.**

“Two-family dwelling” or “duplex” means a building designed or used by two families for residential purposes; provided two townhome units are not considered a duplex.

*Discussion: In at least one zone, duplexes are prohibited, but townhomes are permitted. Several lots have just enough area for two townhomes, and the prohibition against duplexes creates an ambiguity in the code that should be clarified.*

4. **Yard & Setback.**

Proposed ordinance Section 4.

In this city’s code, the term “yard” is not used as often as “setback,” which is undefined in the zoning ordinance, and the terms are used interchangeably.

(Example:)

**BMC 19.20.020(2)(c) Setback Requirements.** The minimum setback requirements, except as permitted in a residential cluster or cottage housing, shall be:

- (i) **Front yard:** 15 feet, except where a front porch consisting of more than or equal to two-thirds of the total front of the house and more than or equal to six feet in depth exists, then the minimum **front yard setback** shall be nine feet to the front of the porch.
- (ii) Twenty-two-foot yard-to-garage vehicle entrance, measured from the property line, sidewalk, or easement for public travel, whichever is closest, except when:
  - (A) The garage is accessed from an alleyway, in which case the **minimum setback** shall be:
    1. Twelve feet if the garage entrance is facing (parallel to) the access alleyway;
    2. Five feet when the garage entrance is perpendicular to the access alleyway.
  - (B) An attached garage already exists that prevents adherence to subsection (2)(c)(ii) of this section.
- (iii) Fifteen-foot street side yard (corner lot).
  - (A) Where a structure on a corner lot qualifies for reduced **front setback**

requirements by meeting porch standards (as identified in subsection (2)(c)(i) of this section), they shall apply this credit only across one street-fronting property line. If one street-fronting property line is adjacent to a less-busy street than the other, then this is the property line that shall receive the less-stringent **setback** requirement.

- (iv) Minimum eight-foot **side yard**, except for attached dwellings, then the common wall separating the dwellings may have a zero side **yard setback**.
- (v) Minimum 15-foot **rear yard**.
- (vi) Accessory Buildings and Uses. Accessory structure(s) may be permitted subject to the permitted uses in BMC 19.20.130 and the performance standards of BMC 19.22.120 and 19.22.130, and also subject to provision of a minimum 10-foot clearance between each structure and the principal dwelling.
- (vii) Off-street parking requirements shall be per Chapter 19.28 BMC (*emphasis added*).

**Recommendation:** Add “or setback” to all the definitions containing “yard.”

**19.12.580 Yard.**

“Yard” *or* “**setback**” means any open space on the same lot with a building or building group lying between the building or building group and the nearest lot line.

*Discussion:* The term “yard” is not used in the zoning code as often as “setback,” which is undefined in the zoning ordinance. This code, however, uses the terms interchangeably.

A course of future review will be the front, side, and rear lot lines to clarify whether a lot with two or more front lot lines, or is triangular, has a rear lot line, and if not, how to calculate lot width and lot depth without a rear lot line.

**5. Duplexes.**

Proposed Ordinance Section 5.

**Facts.** Duplexes are allowed in the single-family zones of R-8,000, R-6,000, and the high density zone, HDR. In each zone the wording is for units per square foot of lot area. The area required for a duplex unit in the two single family zones is .1 and .14 acres. The HDR zone requires .3 acres for each unit, which is the most area for non-single-family unit required in the city in any zone.

Type	HDR Zone (sf)	Units per acre	NMU Zone (sf)	Units per acre	R-6,000 Zone	Units per acre	R-8,000 Zone	Units per acre
Single family	8,600	.2	8,000	0.18	6,000	.14	8,000	.18
Duplex	12,900	.3	NP		4,500	.1	6,000	.14
Triplex (multi)	2,150	.05	3,000	0.07	Not listed		NP	
Townhomes	3,000	.07	3,500	0.08	4,500	.1	6,000	.14
Senior citizen low income housing	2,000	.05	2,000	0.05	2,500	.06	NP	
Mixed use	NP		3,500	0.08	NP		NP	

**19.20.060 HDR high density residential zone.**

...

(2.a.i.B) For duplex dwellings, the minimum lot area per dwelling unit shall be ~~12,900~~ 6,450 square feet. ...

*Discussion: In this section the density calculations (lot area in square feet divided by the amount of square feet required for each unit), is more than twice that for the most dense "single family" zone. The purpose of the elevated square footage is to discourage establishment of single family and duplex residences in this high density zone; however, duplexes should be preferred over single family residents on small lots.*

A course of future action may be to review the various uses listed in this section and possibly clarify (1) whether multiplexes or townhomes are intended, (2) whether the density is appropriate for each zone, and (3) whether the zones in which certain uses are not permitted (e.g. triplex in R-6,000) would be permitted under a different building form. This could be done by removing the number of units (duplex/triplex/fourplex etc.) and leaving the form of multiplex or townhome.

**6. Legislative rezones.**

Proposed Ordinance Section 6.

The state code in RCW 35A.63.100 requires that one public hearing be conducted by the planning commission in accordance with RCW 35A.63.070. This is a legislative process that affects the city generally. The review process as set out currently in the municipal code is the same for both quasi-judicial and legislative rezones. A quasi-judicial rezone is one that affects one or few property owners and is requested by those owners. Although it also requires a hearing before the planning commission, it is like a conditional use permit, a subdivision, or a site plan review. Quasi-judicial actions require the decision maker to be unaffected by ex-parte communication, or discussions with people outside the public hearing. A legislative process does not.

**20.01.070 Exemptions from project permit application processing.**

...

(2) Legislative Actions. The following Type ~~C-2~~ C-1 decisions are legislative, and are not subject to the procedures in this chapter:

- (a) City of Buckley comprehensive plan adoption and amendments;
- (b) Municipal code amendments (zoning code text, development regulations and zoning district amendments);
- (c) Area-wide rezones to implement city policies contained within the city of Buckley comprehensive plan and any amendments thereto;
- (d) Annexations; and
- (e) All other master land use and utility plans and amendments thereto.

The administrative procedures for the legislative decisions specified in this section are set forth coordinately by adopted ordinances. Nothing in this chapter or the permit processing procedures shall limit the authority of the city to make changes to the Buckley comprehensive plan, as part of an annual revision process, or to the city's development

regulations, or to undertake any other legislative actions.

...

*Discussion: The state allows legislative rezones, or rezoning properties in larger areas such as in conjunction with a comprehensive plan change, to be “noticed” the same way the hearing for the comp plan or development regulations are sent: publish in the newspaper and post in regular posting spots. This code requires the same type of notice requirements for quasi-judicial actions, that is mailing to everyone within 300 feet of the proposed rezoned lands.*

#### **IV. ORDINANCE CRITERIA REVIEW**

All development ordinances must conform to the city’s comprehensive plan; development ordinances should be internally consistent with the rest of the city’s codes

##### **A. Buckley Municipal Code**

###### **1.a 19.52.010 Determination – Final action.**

In determining what, if any, amendments to this title are to be adopted, the city council shall give due consideration to the proper relationship of such amendments to the comprehensive plan and to this entire title, it being the intent to retain the integrity and validity of the zoning districts herein described, and to avoid any isolated spot zoning changes in the zoning map. Any amendments adopted by the council may be modified from the form in which they were advertised within the limits necessary to relate properly such amendment or amendments to this title. Final action on such modifications shall be subject to review and report of the planning commission prior to final passage by the council. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 652 Art. 9(12), 1961).

###### **1.b Finding.**

The comprehensive plan is discussed in Section IV.B of this report.

The relationship to the title and to the code are addressed in Section II of this report.

The clarification of code is not likely to negatively affect any zoning district.

###### **2.a 19.52.020 Priority of first application.**

No application for a change of zoning of any lot, parcel or portion thereof shall be considered by the council within one year of the final action of the council upon a prior application covering any of the same described land. This provision, however, shall not impair the right of the council to propose any amendment of change in the boundaries of any of the districts in this title on its own motion. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 652 Art. 9(12), 1961).

###### **2.b Finding.**

This section is not applicable.

###### **3.a 19.52.030 Conditional rezone – Approval.**

As a condition precedent to the rezone of any parcel of land, the council may require that within a specified period of time an acceptable building permit application must be submitted for the use intended in the rezone application, and that failure to submit said building permit application and to start construction within a specified period of time will

result in the rezone automatically becoming null and void and the property reverting back to the zone that existed at the time of the rezone application; provided, the council may extend any time limits set forth in the ordinance granting a conditional rezone if the application for extension is timely made, good cause is shown why the extension is necessary, and the proposed use remains consistent with the comprehensive plan as in effect at the time the extension is requested. Good cause shall relate to factors beyond the control of the applicant and inadequate financing shall not be considered a good cause. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 1, 1984).

**3.b Finding.**

This section is not applicable.

**4.a 19.52.040 Conditional rezone – Concomitant agreement.**

The council may, as a condition of any rezone, require the execution of an agreement concomitant to the rezone ordinance. The concomitant agreement may include such conditions as the council deems necessary in order to neutralize the impact of the proposed property usage upon public services, including streets, parks, utilities and other public services. The concomitant agreement may include both on-site and off-site improvements. The failure to comply with the terms of said concomitant agreement shall result in the rezone immediately becoming null and void and the property reverting to the zone that existed at the time of the rezone application. In the alternative, the council may require specific performance of the agreement. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 2, 1984).

**4.b Finding.**

This section is not applicable.

**5.a 19.52.050 Conditional rezone – Indication on zoning maps.**

If a rezone is conditionally granted under the provisions of this chapter, then the zoning map shall reflect the rezone subject to compliance with certain conditions, and the date for compliance shall be written upon the zoning map. A certified copy of the conditional rezone ordinance and the concomitant agreement, if applicable, shall be filed for record with the Pierce County auditor. (Ord. 22-08 § 1 (Exh. A), 2008; Ord. 22-05 § 1, 2005; Ord. 20-84 § 3, 1984).

**5.b Finding.**

This section is not applicable.

**B. Buckley Comprehensive Plan**

**1.a Policy 1.5.11**

Prevent incompatible land uses through zoning and code enforcement.

**1.b Finding.**

Removal of obfuscation or contradiction in code will help prevent code interpretation that creates incompatibility of land uses through zoning and code enforcement.

**2.a Policy 3.1.2**

The city's regulations should provide the following to enhance sustainable economic development:

- a. Economic disincentives for vacant buildings.

- b. Overlay district design standards for each commercial area, one for east/west-bound SR 410, one for the area adjacent to northeast-bound SR 410, and one for the historic district.
- c. Procedures that are as streamlined as possible and still follow state requirements.

**2.b Finding.**

The proposed ordinance will not provide for the first two items, however, clearer codes will provide a greater ability to act more quickly on proposals.

**3.a Goal 3.7**

*Ensure regulation balances economic growth with the quality of life and the environment.*

**3.b Finding.**

The proposed regulation will allow better balance and quality of life through clearer language and expectations.

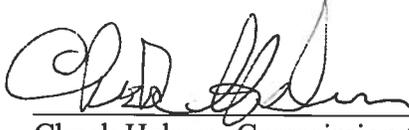
**V. CONCLUSIONS & RECOMMENDATION.**

**A. Comprehensive Plan**

No sections within the comprehensive plan specifically address code creation or adoption.

**B. Buckley Municipal Code**

Based upon a review of facts and findings the planning commission determined that the proposed ordinance is consistent with the comprehensive plan and code and recommends the city council approve the proposed change.



\_\_\_\_\_  
Chuck Helmer, Commission Chair

\_\_\_\_\_  
Date



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>ORD No. __-16 - Rezoning 25 Acres - Spiketon Rd – Evans. Rezone two Spiketon Road parcels 0619101076 and 0619101077 from R-8,000 to R-6,000.</b>  Cost Impact: N/A Fund Source: N/A Timeline: N/A	<b>Agenda Date: January 26, 2016</b>		<b>AB16-013</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson	X	
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
	Muni Court – Jessica Cash		
<b>Attachments:</b> Advisory Report and Planning Commission Recommendation			
SUMMARY STATEMENT:  <p style="text-align: center;"><b>AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, TO REZONE TWO PARCELS ON SPIKETON ROAD FROM R-8,000 TO R-6,000, PARCEL NUMBERS 0619101076 AND 0619101077; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.</b></p> <p>The Planning Commission conducted a hearing on this ordinance December 7, 2015, and recommended approval January 11, 2016.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: <b>Motion to Approve ORD No. __-16 - Rezoning 25 Acres - Spiketon Rd – Evans.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**ORDINANCE NO. \_\_\_ - 16**

**AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, TO REZONE TWO PARCELS ON SPIKETON ROAD FROM R-8,000 TO R-6,000, PARCEL NUMBERS 0619101076 AND 0619101077; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

---

WHEREAS, at the time of complete application the 2005 comprehensive plan was in effect; and

WHEREAS, the comprehensive plan map allows various zones within each comprehensive plan map designation; and

WHEREAS, the subject properties on Spiketon were zoned R-8,000 in 2008; and

WHEREAS, city and state codes allow for quasi-judicial rezones of parcels; and

WHEREAS, a representative of Evans Development West LLC submitted an application September 30, 2015; and

WHEREAS, the application was determined to be complete October 15, 2015; and

WHEREAS, an environmental review was completed and a determination of non-significance was issued November 11, 2015; and

WHEREAS, the planning commission conducted a public hearing on this proposal on December 7, 2015 and issued a report and recommendation attached as Exhibit A; and

WHEREAS, the planning commission met in regular session January 11, 2016, and recommends the council approve the requested rezone without conditions;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The findings of fact and conclusions of law adopted in the report attached as Exhibit A are adopted by this reference as if set forth in full.

Section 2. The proposed rezone from R-8,000 to R-6,000 for two parcels on Spiketon Road with Parcel Numbers 0619101076 and 0619101077 totaling approximately 25 acres is approved.

Section 3. Staff is authorized to change the zoning map to show this change.

Section 4. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City Administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

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

Section 6. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 26<sup>th</sup> day of January, 2016.

---

MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

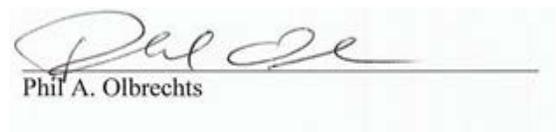
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JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

PUBLISHED:



Phil A. Olbrechts

EFFECTIVE:



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321  
360-829-1921 Ext. 7801 ♦ Fax 360-829-9363 ♦

**DEVELOPMENT CODE AMENDMENT ORDINANCE**  
**Evans Development LLC Rezone on Spiketon, FN: R-3037**

**I. INTRODUCTION**

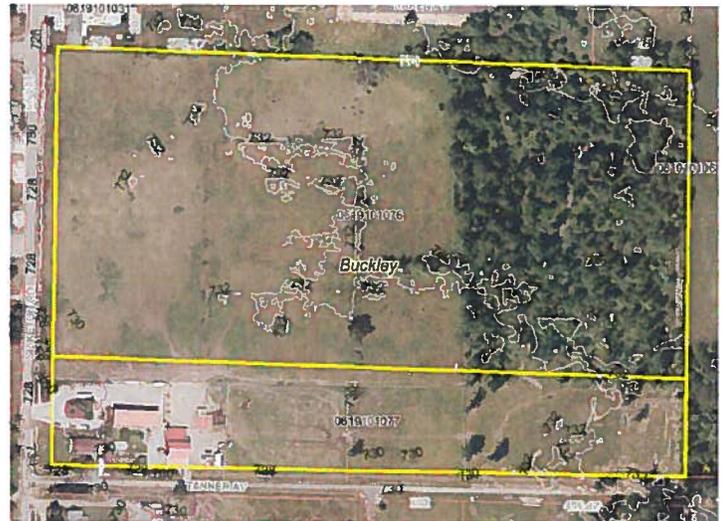
**To:** Honorable Pat Johnson, Mayor  
City Council Members

**From:** Planning Commission Chair Chuck Helmer  
City of Buckley Planning Commission

**Subject:** Commission Advisory Report: Findings, Conclusions, and Recommendation

**Hearing:** Monday December 7, 2015, at 7 p.m.  
City of Buckley Multi-Purpose Center  
811 Main Street  
Buckley, WA 98321

**Issues:** Wetlands.  
Development impacts.



**II. BASIC INFORMATION**

**A. Application Information**

**1. Applicant.**

Evans Development West LLC  
P.O. Box 1744  
Wenatchee, WA 98807-1744

**2. Contact and Contact Information.**

Lisa Klein, AHBL  
2215 N. 30<sup>th</sup> St, Suite 300  
Tacoma, WA 98403

**3. Location, Address, Parcel Number, and RTSQ/Q**

- a. The northern parcel is vacant, fronts Spiketon Road and a portion of the lot is opposite Mountain View Avenue. The Parcel Number is 0619101076. It has no address yet and contains 18.63 acres or 811,523 square feet (sf). The RTSQ/Q is 06191012. This parcel is shown on the Buildable Lands Report Map as “vacant.”
  - i. The wetland and buffer removes about 5.24 acres from the lot, for a developable area of about 13.39 acres (582,268.4 sf).
- b. The southern parcel contains a home and a barn and is addressed 690 Spiketon Road. It fronts Spiketon to the west and Tanner to the south. The Parcel number is 0619101077. It is and contains 6.4 acres, or 278,784 sf. The RTSQ/Q is also 06191012. This parcel is shown on the Buildable Lands Report Map as “underutilized.”
  - i. The wetland and buffer continues onto this site and removes an undetermined portion from development; the land area will be determined at the time development is proposed; but for this report, one acre will be removed for a lot size of 235,224 sf.

**4. Lot information.**

**a. Land Use.**

The northern parcel was used for grazing horses. The southern parcel is still used for agriculture.

**b. Lot Characteristics.**

- i. Both lots are rectangular.
- ii. Three wetlands are indicated on the northern lot in a wetland report dated September 28, 2015, by Talasaea Consultants, Inc.

**Wetland A** is a 2,699 sf depressional palustrine emergent wetland, with a total score for functions of 13. (Category IV, 25-foot buffer.)

**Wetland B** is a 588 sf depressional palustrine emergent wetland, with a total score for functions of 13 and is located within the buffer for Wetland C. (Category IV, 25-foot buffer.)

**Wetland C** is a 161,013 sf palustrine emergent and palustrine forested wetland with a total score for functions of 16. Wetland C continues onto the southern lot toward Tanner for an unspecified distance. (Category III, 50-foot buffer.)

**c. Terrain & Vegetation.**

The terrain is flat, with forested area to the east and pasture to the west. Vegetation on the site includes grasses and wetland plants

**d. Neighboring Zoning & Land Use.**

**North:** While zoning to the north is HDR, the uses are single family residences (SFRs). The plat, Bevlo Addition, created eight lots and two 60-foot-wide rights-of-way, Bevlo (north/south), and Karen (east/west). Neither Karen nor Bevlo are shown on the city's future street plan. The lots are 80 feet by approximately 120 feet. At the time of the plat, an additional street to the west and 13 additional lots were shown as planned for the future. At the time the plat was approved a fence was shown 11 to 20 feet north of the south property line.

**South:** Zoning to the south is R-8,000. Uses are vacant land and SFRs.

**East:** Zoning to the east is Neighborhood Mixed Use (NMU) and Light Industrial (LI); the NMU area is undeveloped; the LI area is developed with a stair company.

**West:** Zoning to the east is R-6,000; the uses are SFRs and vacant lands.

**e. Traffic.**

- i. Spiketown Road and Tanner Avenue are collector streets.
- ii. According to the Development Guidelines and Public Works Standards, collectors require 60 feet of right-of-way, 36 feet of pavement width, parking lanes, curb, sidewalks (5 feet wide), planter strips, and a design speed of 25 miles an hour.
- iii. The existing Spiketown Road right-of-way is 60 feet in width, and the pavement width shows in the County's GIS maps to be about 20 feet. It also shows that the pavement is on the west side of the right-of-way, which is supported by the applicant's survey.



- A. Currently, the east 30-feet of right-of-way is used for a stormwater conveyance and private yards.
- iv. Tanner Avenue right-of-way is 60 feet in width, and the pavement width shows to be about 15 feet for use by a few homes as a driveway.
- v. Neither road contains curbs, gutters, or sidewalks, except for the west side of Spiketon near Mountain View Avenue.
- vi. The future street map shows another collector on these properties' east property lines for which no right-of-way exists.
  - A. A wetland exists in this area. Because no right-of-way exists for this collector street, the planned street may be moved to the east or west to accommodate the wetland and its buffer. The goal of the street appears to be to connect Tanner to Ryan.

**History.**

Both lots were zoned Residential Agriculture in 1981. Both were zoned R-8,000 in 2008. The request is to rezone the parcels to R-6,000.

**B. Proposal Description.**

**1. Proposed Designations.**

**a. Proposed Zoning.**

The proposed zone on both parcels is R-6,000.

**b. Proposed Comprehensive Plan Designation.**

No change is required to the comprehensive plan designation

**2. Existing Designations.**

**a. Existing Zoning.**

Two items must be compared between the two zones before a recommendation can be given: uses and density.

- i. The existing zone on both parcels is R-8,000.
- ii. The R-8,000 zone allows a variety of agricultural uses:
  - A. Keeping livestock as a permitted use; the same activity is conditional in the R-6,000 zone.
  - B. Commercial cultivation of land for agricultural products; the R-6,000 zone prohibits this use.
- iii. A comparison of the uses in these two zones shows the following (see attachment):

**Table 1.**

<b>Description of uses the same or different in each zone</b>	<b>Number</b>
Permitted outright or as accessory use in both zones	23
Conditional use permit required in both zones	13
Permitted outright or conditionally in R-6,000 and prohibited in R-8,000	7
Permitted outright, conditionally, or as an accessory use in R-8,000 and prohibited in R-6,000	6

Of these listed, the most interesting subset is the list of 13 differences, which follows:

**Table 2.**

Use list from BMC 19.20.130	R-6000	R-8000
Lodging houses	P	C
Adult family homes (six or fewer through occupants)	P	C
Assisted living facility	P	X
Multifamily dwellings (three or more units attached and made accessible a common entrance)	P	X
Senior citizen low-income housing	P	X
Day care, adult	C	X
Day care, child day care center	C	X
Keeping of livestock, poultry, rabbits, or bees	C	P
Commercial cultivation of land for agricultural products, vineyards, gardening, fruit growing	X	P
Intensive agricultural production	X	P
RV/tent campground	X	A
Municipal improvements	X	C
Offices, government	X	C

The differences in uses appear to be appropriate to the density of the zone in which the use would be placed. The R-6,000 zone allows more residential uses and the R-8,000 zone allows more agricultural uses. While both zones allow duplexes, only the R-6,000 zone allows three or more attached units. The larger lot requirement in the R-8,000 zone may provide more area to complement the livestock requirements of BMC 9.10.210:

**9.10.180 Restraint and enclosure.**

All persons owning or having control or possession of any rabbits, goats, swine, chickens, turkeys, geese, ducks, horses, cattle, pigeons, pheasants, peacocks, peafowl or other fowl within the city shall keep the same restrained and enclosed at all times on the premises owned and occupied by such persons. (Ord. 20-08 § 7, 2008).

**9.10.190 Required area for livestock.**

Livestock shall only be permitted within those areas and zoning classifications specified for such use in BMC 19.20.130. When legally permitted, all livestock as defined in BMC 9.10.020 must be contained in an enclosure that

encompasses at least one-third acre or 14,520 square feet per large animal or at least one-tenth acre or 4,356 square feet per small animal. (Ord. 20-08 § 7, 2008).

**9.10.210 Location of building – Enclosures must be clean.**

- (1) Any buildings, pens or enclosures inhabited by livestock, small animals other than domesticated animals or poultry shall be located at a minimum distance of 100 feet of any adjoining residence.
- (2) All houses, pens or enclosures where chickens, turkeys, geese, ducks, pigeons or other domestic fowl or rabbits are kept shall be kept clean and free from disagreeable odors. No organic materials furnishing food for flies shall be allowed to accumulate on the premises. All manure and other refuse must be kept in tightly covered fly-proof receptacles and lawfully disposed of at least once each week. (Ord. 20-08 § 7, 2008).

**Use conclusion:** The differences in uses is appropriate to the density requirements; the largest effect is the density allowance for the senior citizen low income housing use allowed in the R-6,000 zone and not in the R-8,000 zone. Please see the discussion below.

**b. Density calculations, estimated.**

Approximate density calculations consist of three parts, density for the gross square footage, density with 30 percent of the land removed for roads and utilities, and the area for critical areas removed. The removal of land for density calculations is because the code reads resultant lots must be a certain size.

All things being equal, the change from R-8,000 to R-6,000 should increase on these lots by 25 percent  $((8,000-6,000)/8,000=.25)$ .

When initially zoned R-8,000, the wetland in this area was likely unknown and the proposed density of R-8,000 was to be based on the entire lot, less the area needed for roads and utilities. Table 3 below shows the effect of the wetland on the lot’s density. Table 4 below uses these numbers to estimate potential density in both zones.

**Table 3. Lot size calculations**

	<b>Lot size (sf)</b>	<b>Less 30 percent (sf)</b>	<b>Less wetland and 30 percent (sf)</b>
<b>Northern lot</b>	811,522.8	568,065.96	408,287.88
<b>Southern lot</b>	278,784	195,148.8	164,656.8
<b>Total area</b>	1,090,306.8	763,214.76	572,944.68

As seen in the information given in Section I.A.3 of this report, the combined original lot size is 1,090,306.80 square feet (sf). Using this gross square footage, the R-8,000 zone would yield 136 single family units or 181 duplex or townhome units. The R-6,000 zone would yield 181 single family units, 242 duplexes, or 305

senior family low-income housing. By changing zones, the lots appear to gain 45 single family homes, 60 duplex or townhome units, or 305 senior low income housing units.

However, if the density of the wetland were used in the density calculation, the number of single family units – after removal of the 30 percent assumed for road and storm utilities – is 71 lots in the R-8,000 zone. The number of duplex/townhomes would be 95 units. Comparing the gross R-8,000 resulting units to the net R-6,000 resulting units, we find fewer units allowable in the R-6,000 zone, except for senior citizen low income housing units:

**Table 4.  
Comparison before & after proposed rezoning**

Type	R-6,000	Resulting units**	R-8,000	Resulting units***
<b>Single family residences</b>	6,000 sf/du* OR 7.26 du/acre	95	8,000 sf/du OR 5.45 du/acre	136
<b>Duplex</b>	4,500 sf/du OR 9.68 du/ac	127	6,000 sf/du OR 7.26 du/ac	181
<b>Senior citizen low income housing</b>	2,500 sf/du OR 17.42 du/ac	229	n/a	0
<b>Townhomes</b>	4,500 sf/du OR 9.68 du/ac	127	6,000 sf/du OR 7.26 du/ac	181

\* “du” means “dwelling unit”

\*\* calculated on combined lot area less wetland area, less 30 percent for roads

\*\*\* calculated on combined gross lot area

**Density conclusion:**

Based on the above density calculations, using the probable net lot sizes (combined gross less wetlands, less 30 percent for roads and utilities) the R-6,000 zone would provide reduced development potential as compared to the gross R-8,000 zoning. With the exclusion of the senior citizen low income housing use, the change in zoning could have no added development impacts.

**c. Comprehensive Plan Designation.**

The existing comprehensive plan designation on both lots is Urban Lower Density (ULD).

**d. Other.**

In the past few years development occurred on Ryan Road that extended the sewer line and allows the city to increase density in this area. A concern was voiced by the city engineer about the city’s ability to address development impacts. Impacts can be

seen in traffic, density, police, fire, and utilities. Much of this depends on the density allowed and the difference the extra 2,000 feet per lot creates.

**Recommendation 1.** The planning commission considered a possible condition that would restrict the lots from siting low income senior housing. The planning commission decided that the parcel should not be singled out for removing this use, but the entire code should be addressed.

**Recommendation 2.** The planning commission considered a possible condition that would the density could not exceed the number of units allowed by the R-8,000 zone using the gross lot area. The planning commission decided that the parcel should not be singled out for this issue, but the entire code should be addressed.



### C. Noticing Information

#### 1. Public Participation and/or Notification.

##### a. Application.

The application was received September 30, 2015, and determined to be complete October 15, 2015.

##### b. Notice of Application.

The notice of complete application using the optional SEPA process was published October 21, 2015, with a comment period ending November 5, 2015. One comment was received from Department of Ecology.

##### c. SEPA determination.

The SEPA threshold determination of non-significance (DNS) was mailed to property owners within 300 feet of the proposal and issued November 11, 2015, with no additional public comment allowed. The appeal period ended seven days later on November 18, 2015.

##### e. Hearing Notice.

Public Hearing Notice and proposal description was mailed with the SEPA determination and published in the Wednesday, November 11, 2015, legal section of The Enumclaw Courier Herald, posted on the City Bulletin Boards in accordance with city laws.

### III. REZONE CRITERIA REVIEW

All rezones must conform to the city's comprehensive plan and city codes.

#### A. Buckley Municipal Code

##### 1.a. Fact, BMC 19.52.010 Determination – Final action.

In determining what, if any, amendments to this title are to be adopted, the city council shall give due consideration to

- the proper relationship of such amendments to the comprehensive plan

- and to this entire title, it being the intent to retain the integrity and validity of the zoning districts herein described, and to
  - avoid any isolated spot zoning changes in the zoning map.
- Any amendments adopted by the council may be modified from the form in which they were advertised within the limits necessary to relate properly such amendment or amendments to this title. Final action on such modifications shall be subject to review and report of the planning commission prior to final passage by the council.

**1.b. Finding.**

- The comprehensive plan designation would allow zoning to be either R-20,000, R-8,000, or R-6,000.
- The zoning code doesn't specifically preclude rezoning any property.
- The parcels are contiguous to one another, and are directly east of R-6,000-zoned parcels across Spiketon Road. Zoning to R-6,000 will not create a spot-zone.

**2.a. Fact, BMC 19.52.020 Priority of first application.**

No application for a change of zoning of any lot, parcel or portion thereof shall be considered by the council within one year of the final action of the council upon a prior application covering any of the same described land. This provision, however, shall not impair the right of the council to propose any amendment of change in the boundaries of any of the districts in this title on its own motion

**2.b. Finding.**

No applications to rezone these parcels were received by the city within the past year.

**3.a. Fact, BMC 19.52.030 Conditional rezone – Approval.**

As a condition precedent to the rezone of any parcel of land, the council may require that within a specified period of time an acceptable building permit application must be submitted for the use intended in the rezone application, and that failure to submit said building permit application and to start construction within a specified period of time will result in the rezone automatically becoming null and void and the property reverting back to the zone that existed at the time of the rezone application; provided, the council may extend any time limits set forth in the ordinance granting a conditional rezone if the application for extension is timely made, good cause is shown why the extension is necessary, and the proposed use remains consistent with the comprehensive plan as in effect at the time the extension is requested. Good cause shall relate to factors beyond the control of the applicant and inadequate financing shall not be considered a good cause.

**3.b. Finding.**

No conditions for this proposed rezone are recommended.

**4.a. Fact, BMC 19.52.040 Conditional rezone – Concomitant agreement.**

The council may, as a condition of any rezone, require the execution of an agreement concomitant to the rezone ordinance. The concomitant agreement may include such conditions as the council deems necessary in order to neutralize the impact of the proposed property usage upon public services, including streets, parks, utilities and other public services. The concomitant agreement may include both on-site and off-site improvements. The failure to comply with the terms of said concomitant agreement

shall result in the rezone immediately becoming null and void and the property reverting to the zone that existed at the time of the rezone application. In the alternative, the council may require specific performance of the agreement

**4.b. Finding.**

No conditions for this proposed rezone are recommended.

**5.a. Fact, BMC 19.52.050 Conditional rezone – Indication on zoning maps.**

If a rezone is conditionally granted under the provisions of this chapter, then the zoning map shall reflect the rezone subject to compliance with certain conditions, and the date for compliance shall be written upon the zoning map. A certified copy of the conditional rezone ordinance and the concomitant agreement, if applicable, shall be filed for record with the Pierce County auditor.

**5.b. Finding.**

Unless the council ascribes conditions to this proposal, the zoning shall appear the same as any other R-6,000-zoned parcel.

**B. Buckley Comprehensive Plan**

**1.a. Fact, GOAL 1.1 ENSURE A HEALTHY AND PRODUCTIVE ENVIRONMENT FOR BUCKLEY’S CITIZENS BY PRESERVING BUCKLEY’S SMALL TOWN CHARACTER WHILE PROVIDING ADEQUATE LAND AND SERVICE CAPACITY FOR POPULATION AND EMPLOYMENT GROWTH.**

*Discussion.* Traditionally, development regulations have attempted to avert conflict by segregating different development types into districts with relatively uniform development characteristics such as permitted uses or height. In many areas of Buckley, this approach is a reasonable and effective method for regulating development.

In other parts of Buckley, it may be possible and desirable to have several different types of development located relatively close to each other. Such a blending of development types could help reduce dependence on the automobile and provide greater opportunities for innovative mixed-use development. In these areas, development regulations may need to be specifically developed to address the district’s unique characteristics. Special development regulations may also be necessary to take account of other factors influencing and shaping new growth.



**1.b. Finding.** The rezone will add about 25 acres, less about 5.5 acres of critical areas, of R-6,000-zoned land.

**2.a. Fact, POLICY 1.3.5 ENCOURAGE MORE EFFICIENT USE OF THE LAND WHERE SERVICES EXIST, THROUGH SUCH DEVICES AS FLEXIBLE LOT SIZES AND SETBACKS TO ACCOMMODATE INCREASING URBAN DENSITIES.**

**2.b. Finding.** The city doesn't yet have regulations for flexible lot sizes, but in its place, the rezone will enable development on the parcel that is less than gross density of the existing zone (Please see section II.B.2.b of this report.)

**3.a. Fact, GOAL 1.4 HAVE CRITICAL AREAS AND ENVIRONMENTALLY SENSITIVE AREAS RECEIVE CONSIDERATION WHEN DESIGNATING AREAS FOR MORE INTENSIVE DEVELOPMENT. PRESERVE DEVELOPMENT POTENTIAL BY ALLOWING CLUSTERING OF DEVELOPMENT IN AREAS WITH ENVIRONMENTAL CONSTRAINTS.**

**Discussion.** Preserving Buckley's rural character includes maintaining open spaces and view corridors to help encourage an outdoor aesthetic and participation in a natural environment. Encouraging clustering of development allows maintenance of open space and helps protect sensitive areas.



**3.b. Finding.** The rezone effectively allows reduction of single family lot size to the lot size allowed for duplexes and townhomes in the R-8,000 zone.

**4.a. Fact, POLICY 1.4.1 DEVELOP APPROACHES THAT ALLOW FOR CLUSTERED DEVELOPMENT IN ORDER TO:** • Preserve sensitive (critical) natural features and to provide flexibility to the property owner, • Encourage the maximization of view opportunities, and • Preserve contiguous portions of development sites in permanent open space.

**4.b. Finding.** While not clustered, the rezone will effectively allow flexibility in lot size and will preserve a wetland.

**5.a. Fact, POLICY 1.8.2 ZONING DENSITIES SHOULD BE PHASED IN AS NEEDED TO ENCOURAGE NEW DEVELOPMENT TO FIRST LOCATE WHERE ADEQUATE PUBLIC FACILITIES AND SERVICES CURRENTLY EXIST, THEN IN AREAS THAT WILL BE SERVED ADEQUATELY BY A COMBINATION OF BOTH EXISTING AND ADDITIONAL PUBLIC FACILITIES AND SERVICES, AND FINALLY, IN THE REMAINING PORTIONS OF THE URBAN GROWTH AREA.**

**5.b. Finding.** The rezone would act as a phase of density buffering between the future high density development to the north and the lower density to the south.

**6.a. Fact, POLICY 1.8.3 DEVELOPMENT APPROVALS SHOULD BE CONTINGENT UPON FACILITIES ALREADY BEING IN PLACE AS THE DEVELOPMENT OCCURS. THE FOLLOWING ACTIONS CONSTITUTE DEVELOPMENT: A BUILDING PERMIT, SUBDIVISION APPROVAL, REZONING, SHORELINE PERMIT, VARIANCE, OR ANY OTHER OFFICIAL ACTION THAT AFFECTS THE DEVELOPMENT OF LAND. THE CITY SHALL TAKE INTO ACCOUNT**

THE VARIATION IN THESE DIFFERENT TYPES OF DEVELOPMENT APPROVALS IN PREPARING IMPLEMENTATION REGULATIONS. PROVISIONS FOR THE REVIEW OF APPLICATIONS FOR DEVELOPMENT AND THE TIMING OF THE ACTUAL IMPACTS CAUSED BY THE DIFFERENT TYPES OF DEVELOPMENTS WILL BE ADOPTED IN THE CITY'S CONCURRENCY MANAGEMENT SYSTEM AS PART OF THE LAND DEVELOPMENT REGULATIONS.

- 6.b. Finding.** Water and sewer are available on Mountain View Avenue, which is on the northwest corner of the northern lot. Any proposed development will be required to bring adequate utilities and frontage improvements to the site.
- 7.a. Fact, POLICY 2.1.2 CREATE AN EFFECTIVE TRANSITION BETWEEN DOWNTOWN, COMMERCIAL AREAS, AND RESIDENTIAL NEIGHBORHOODS THROUGH ZONING.**
- 7.b. Finding.** The rezone will allow a transition between R-8,000 and the High Density Residential zones.
- 8.a. Fact, GOAL 2.2 PROMOTE A RANGE OF HOUSING TYPES TO INCREASE DENSITY IN AREAS WELL SERVED BY PUBLIC GOODS AND SERVICES.**  
Discussion. There are many different housing types that can be used to help increase density. Developments utilizing housing types such as duplexes, townhouses, cottage housing and single-family housing on smaller lots can complement the SMALL TOWN character. Under current zoning, Buckley would have difficulty providing enough housing stock to satisfy projected growth. This goal helps make it possible to provide housing that is well served by public goods and services allowing for more efficient growth.
- 8.b. Finding.** The rezone will not produce housing types. Except for the senior citizen low income housing opportunity allowed in the R-6,000 zone, both zones allow duplexes and townhomes in addition to single family residential.
- 9.a. Fact, GOAL 2.5 IDENTIFY UNDERDEVELOPED AREAS, UNCONSTRAINED BY CRITICAL LANDS, WHERE URBAN DENSITY CAN BE INCREASED.**  
Discussion. This goal helps to identify areas where projected growth may occur, while preserving sensitive areas within Buckley.
- 9.b. Finding.** The 25 acres are shown on the buildable lands map as “underutilized” and “vacant,” they also are partially constrained by wetlands and their buffers. The rezone will allow placement of the lots’ current densities on the sites without affecting the wetlands or buffers.
- 10.a. Fact, POLICY 2.5.1 INCREASE ZONING DENSITY ON BUILDABLE LANDS THAT ARE FREE FROM ENVIRONMENTAL CONSTRAINTS IN ORDER TO MEET THE REQUIRED HOUSING PROJECTIONS.**
- 10.a. Finding.** A majority of the two parcels are free from environmental concerns. Increasing the density from R-8,000 to R-6,000 allows the applicant to build a similar number of units if the wetland were included in the density calculation.

11. **Element 3, Economic Development**, contains no pertinent goals or policies for this rezone.
12. **Element 4, Urban Design**, contains no pertinent goals or policies for this rezone.
13. **Element 5, Parks and Recreation**, contains no pertinent goals or policies for this rezone.
- 14.a. **Fact, POLICY 6.2.3 WHEN REVIEWING DEVELOPMENT PROPOSALS, REZONING, AND ROAD VACATION PETITIONS, VARIANCES, USE PERMITS, SUBDIVISIONS PLATS, AND RESIDENTIAL AND COMMERCIAL PROJECTS THE CITY SHOULD ENSURE THEY ARE CONSISTENT WITH THE GOALS AND POLICIES IN THIS TRANSPORTATION ELEMENT.**
- 14.b. **Finding.** The rezone appears to be consistent with the goals and policies of the transportation element; the element will be reviewed in detail with any subsequent development submittal.
- 15.a. **Fact, POLICY 6.4.4 FUTURE STREETS AND THEIR CLASSIFICATIONS WILL FOLLOW A REGULAR DISTRIBUTION PATTERN THAT ANTICIPATES LAND USE POTENTIAL AND PROVIDES FOR ORDERLY DEVELOPMENT.**
- 15.b. **Finding.** The future street right-of-way scheduled to be east of these parcels may need to relocate upon the parcels' development because of the location of wetlands and buffers.
16. **Element 7, Capital Facilities**, contains no pertinent goals or policies for this rezone.
17. **Element 8, Utilities**, contains no pertinent goals or policies for this rezone.

**V. CONCLUSIONS & COMMISSION RECOMMENDATION.**

**A. Zoning.**

The rezone meets the requirements of BMC 19.52. Two staff recommendations were forwarded for consideration, which are addressed above in Section II.B.2. A concern originated from the city engineer about development impacts. The impacts could only be the difference from R-8,000 to R-6,000. The planning commission decided that the rezone would provide a similar density to the R-8,000 zone if it were free of critical areas, as it was probably assumed when it was zoned previously.

**Table 5. R-8,000 density calculations (gross less 30 percent)**

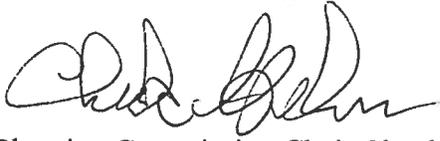
Parcel 076	$568,065.96/8000=$	71 units
Parcel 077	$195,148.8/8000=$	24 units
Total single family units:	95 units	
Duplex/townhome units:	127 units	

**B. Comprehensive Plan.**

The proposed rezone meets the listed goals and policies of the comprehensive plan.

**C. Recommendation.**

**Based upon a review of facts and findings the planning commission determined that the proposed rezone would be consistent with the comprehensive plan and code, and recommends the council approve the proposed rezone without condition.**



Planning Commission Chair Chuck Helmer

Date: 1/12/2016



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>WSDOT Grant Funding Local Agency Agreement (Supplement #4)– Realignment Project Phase II</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB16-014</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Tani Stafford	X	X
	City Clerk – Joanne Starr		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
Fund Source: Fund 102 (Grant)	Police Depart – Chief Arsanto		
Timeline: Immediate	Muni Court – Jessica Cash		
	City Clerk – Joanne Starr		X
<b>Attachments:</b> WSDOT LAA Supplement No 4, TIB Bid Authorization form			
<p>SUMMARY STATEMENT: The Supplement to the Agreement between the City and WSDOT accepting the grant for construction of Phase II of the SR410/SR165 Realignment Project. The supplement obligates the construction phase funds for the City of Buckley SR410/SR165/Ryan Rd/112th Street E Realignment Phase 2 project, in the amount of \$1,935,500. The total project cost is \$2,110,440 with \$1,521,920 in federal grants, and \$580,074 in TIB grants (see the TIB Bid Authorization), and the City local share of \$8,446.</p> <p>Staff is seeking approval on both the LAA Supplement No 4 and TIB Bid Authorization form.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
<b>RECOMMENDED ACTION: MOTION to Approve Grant Funding Local Agency Agreement (Supplement #4) and TIB Bid Authorization form for Construction of Phase II of the SR410/SR165 Realignment Project.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement entered into and executed on [blank]. All provisions in the basic agreement remain in effect except as modified by this supplement. The change to the agreement are as follows:

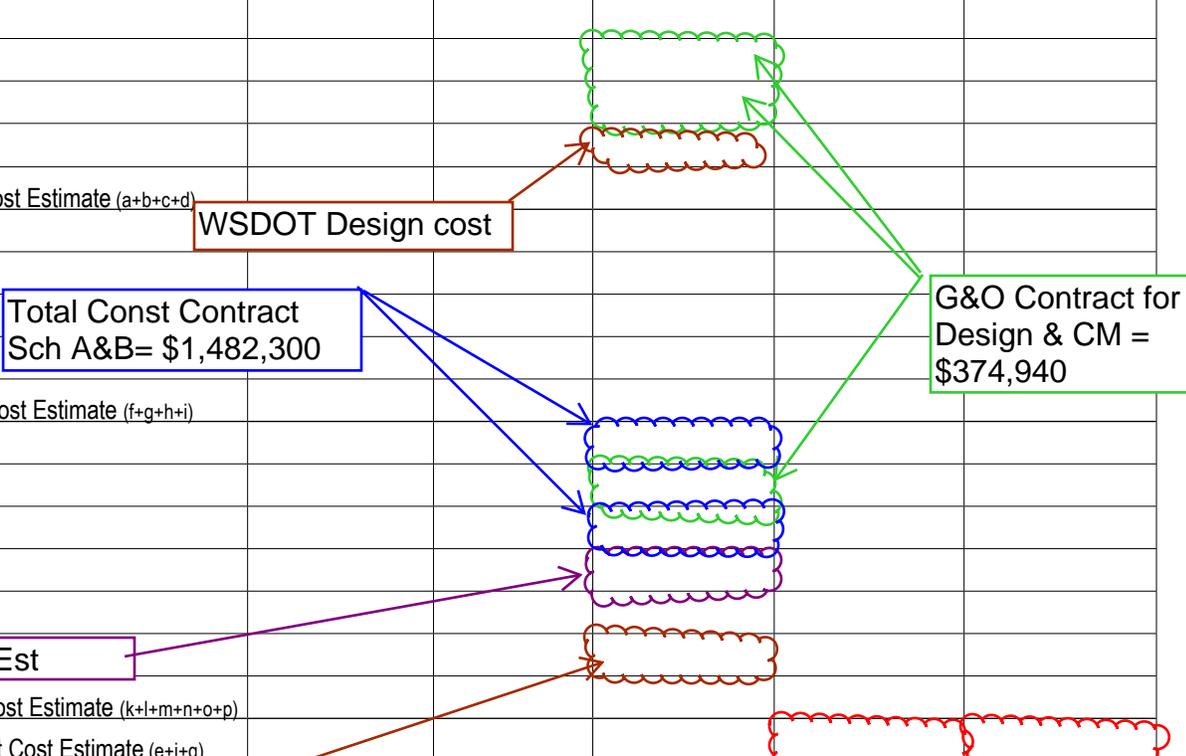
**Project Description**

Name \_\_\_\_\_ Length \_\_\_\_\_  
 Termini \_\_\_\_\_  
**Description of Work**                      No Change

Reason for Supplement \_\_\_\_\_

Are you claiming indirect cost rate?    Yes    No                      Project Agreement End Date \_\_\_\_\_  
 Does this change require additional Right of Way or Easements?    Yes    No    Advertisement Date: \_\_\_\_\_

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE					
% a. Agency					
b. Other					
Federal Aid Participation Ratio for PE					
c. Other					
d. State					
e. Total PE Cost Estimate (a+b+c+d)					
Right of Way					
% f. Agency					
g. Other					
Federal Aid Participation Ratio for RW					
h. Other					
i. State					
j. Total R/W Cost Estimate (f+g+h+i)					
Construction					
% k. Contract					
l. Other					
m. Other					
Federal Aid Participation Ratio for CN					
n. Other					
o. Agency					
p. Other					
q. Total CN Cost Estimate (k+l+m+n+o+p)					
r. Total Project Cost Estimate (e+j+q)					



The Local Agency fully understands and agrees to said Title 23, regulations and policies and procedures, and as a condition to payment of the project, it accepts and will comply with the applicable provisions.

**Agency Official** \_\_\_\_\_ **Washington State Department of Transportation**  
 By \_\_\_\_\_ By \_\_\_\_\_  
 Title \_\_\_\_\_ Director, Local Program  
 Date Executed \_\_\_\_\_

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

## VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

## VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

## IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

## VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

## XVII. Assurances

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement entered into and executed on  
 All provisions in the basic agreement remain in effect except as modified by this supplement.  
 The change to the agreement are as follows:

**Project Description**

Name \_\_\_\_\_ Length \_\_\_\_\_  
 Termini \_\_\_\_\_  
**Description of Work**                      No Change

Reason for Supplement

Are you claiming indirect cost rate?    Yes    No                      Project Agreement End Date

Does this change require additional Right of Way or Easements?    Yes    No    Advertisement Date:

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE					
% a. Agency					
b. Other					
Federal Aid Participation Ratio for PE					
c. Other					
d. State					
e. Total PE Cost Estimate (a+b+c+d)					
Right of Way					
% f. Agency					
g. Other					
Federal Aid Participation Ratio for RW					
h. Other					
i. State					
j. Total R/W Cost Estimate (f+g+h+i)					
Construction					
% k. Contract					
l. Other					
Federal Aid Participation Ratio for CN					
m. Other					
n. Other					
o. Agency					
p. State					
q. Total CN Cost Estimate (k+l+m+n+o+p)					
r. Total Project Cost Estimate (e+j+q)					

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

**Agency Official**

**Washington State Department of Transportation**

By  
Title

By  
Director, Local Program  
Date Executed

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

## VI. Payment and Partial Reimbursement

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If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

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# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Agreement – AV Capture All Contract – Audio Recording Service</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB 16-015</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Kristin Eick		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
Cost Impact:	City Clerk – Joanne Starr		X
Fund Source:	Muni Court – Jessica Cash		X
Timeline:			
<b>Attachments: AV Capture All Contract &amp; Attorney Message</b>			
<p>SUMMARY STATEMENT: Agreement being presented for consideration is for audio recording service with AV Capture All. This is a new service which is suggested for enhancing our current recording operation.</p> <p>Staff requests and recommends that the City Council authorize the Mayor to execute the Agreement.</p>			
<p>COMMITTEE REVIEW AND RECOMMENDATION:</p> <ul style="list-style-type: none"> <li>- This agreement has not been reviewed by Committee. Staff does request and recommend approval of this agreement.</li> </ul>			
<p>RECOMMENDED ACTION: <b>A MOTION Authorizing the Mayor to Execute the Agreement with AV Capture All for Audio Recording Service.</b></p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

Dave,

I honestly have to defer to you and Jessica here. While we squeezed one more concession from them on the statute of limitations (which is great), I don't agree that their comments satisfied the concern we presented to them regarding their employees intentionally altering content before it is made public. While they may have a policy that prohibits employees from altering video, we all know that employees don't always follow the rules. Also, whether or not the alterations are easily proven to have been done by AVCaptureAll is not the issue. The issue is that we wanted a waiver of their dollar limitation on liability in the instance that it occurs.

That being said, as I told Dave, the risk of an employee doing this (hopefully) is relatively low. And any other damages we might incur are already effectively precluded by the disclaimers of warranties in the agreement. We did get them to agree to indemnify us for failing to assist with public records requests. All in all, I think the risk is low, but I don't like it. ☺

Kristin

**Kristin N. Eick** | Attorney at Law

Ogden Murphy Wallace P.L.L.C.  
901 Fifth Avenue, Suite 3500 Seattle, WA 98164  
phone: 206.447.7000 | fax: 206.447.0215  
[keick@omwlaw.com](mailto:keick@omwlaw.com) | [omwlaw.com](http://omwlaw.com)



## SUBSCRIPTION AGREEMENT

This Subscription Agreement ("Agreement") entered into on this **1st** day of **January, 2016** ("Effective Date") between AV Capture All, Inc., a Washington State Corporation having a principal place of business at 19125 Northcreek Parkway, Suite 120, Bothell, WA 98011 (referred to herein as "Licensor"), and **City of Buckley, WA**, having a principal place of business at **933 Main Street, Buckley, WA, 98321** referred to herein as "Subscriber"), collectively referred to as ("Parties"), along with any documents attached hereto or incorporated by reference herein ("Exhibit"), governs Licensor's obligations to Subscriber and Subscriber's rights with respect to Products furnished by Licensor. In consideration of the mutual promises contained herein, the Parties agree as follows:

### 1. DEFINITIONS

- 1.1. "Authorized User" means an individual who has Subscriber's permission to use the Licensor's Products. An Authorized User must be a salaried staff employee of Subscriber or person responsible for configuration, administration, management, and maintenance of electronic computing and storage devices. For purposes of this Agreement, the use of the term "Subscriber" hereinafter shall denote Subscriber and Authorized Users as a single whole.
- 1.2. "Billing Document" means an electronic and/or hardcopy document such a sales invoice, purchase receipt, or other document(s) issued by Licensor, which indicates the items, quantities, and prices for Products provided to Subscriber.
- 1.3. "Billing Period" means the minimum time interval within the Subscription Term, as specified on the Billing Document, for which the Subscription Fee is paid.
- 1.4. "Content" means the audio, video and metadata digitally captured and stored through the use of Licensor's Products.
- 1.5. "Hosting" means the storage and delivery of Subscriber's Content. Content may be stored on Subscriber's local capture drive, Subscriber's local network server or Licensor's hosted server.
- 1.6. "Other Software" means any third party software installed and used on the same computer that Licensor's Products are installed on.
- 1.7. "Products" shall mean the software, service and/or hardware manufactured, developed provided, offered and/or licensed by Licensor, (whether free of charge or in exchange for a Subscription Fee, as determined by the Licensor), all as further described in Exhibit A.
- 1.8. "Subscription" means the receipt of Products by Subscriber, in exchange for payment of the Subscription Fee in compliance with the terms and conditions of this Agreement. "Active Subscription" refers to any Subscriptions (including suspended Subscriptions) that are not terminated.

- 1.9. "Subscription Fee" means the amount due for each Subscription for each Billing Period during the Subscription Term. The Subscription Fee is described in Exhibit A. The Subscription Fee does not include taxes, customs duties, penalties, interests, shipping charges, and other costs (if any).
- 1.10. "Subscription Term" means the time period during which Subscriber is entitled to receive Product(s) from Licensor, provided that the terms and conditions of this Agreement are complied with. The Subscription Term is listed in Exhibit A.
- 1.11. "Support" means service provided by Licensor in association with providing Products to Subscriber for the Subscription Term.

## **2. SCOPE OF AGREEMENT**

- 2.1. Licensor shall hereby grant Subscriber the right to obtain, install and use, for the duration of the Subscription Term, the Products described herein as indicated on Exhibit A, subject to the terms, conditions, and limitations specifically set forth in this Agreement.
- 2.2. This Agreement and the attached Exhibits constitute the entire Agreement. Work performed by a third party contractor is NOT part of the terms and conditions of this Agreement.

## **3. ACCEPTANCE OF THIS AGREEMENT**

- 3.1. This Agreement will become effective upon the Effective Date. The terms of any purchase order or invoice that is issued by either party in connection with this Agreement shall not modify the terms of this Agreement.

## **4. SUBSCRIBER GENERAL OBLIGATIONS**

- 4.1. Subscriber shall inform all of its Authorized Users of the terms and conditions of this Agreement. Subscriber shall enforce their Authorized User's compliance with all the requirements of this Agreement.
- 4.2. Subscriber shall refrain from assigning Authorized User rights to any individuals and/or legal entities that are not immediate employees of Subscriber, and to take full responsibility for any actions on their part that could lead to abuses or violations of the terms and conditions of this Agreement.
- 4.3. Subscriber shall not use the Content for any unlawful purposes or actions. In the event that Subscriber uses the Content to violate the rights of a third party or violates applicable laws, Subscriber agrees to defend, indemnify and hold Licensor harmless against all lawsuits, liability, charges, and penalties, including resulting costs and expenses and payment of attorney fees, that may arise as a result of such actions.
- 4.4. Subscriber and Authorized Users will assist Licensor in the installation of Product during normal business hours by providing the following: (i) sufficient work space for Licensor(ii) access to the Internet for the computer on which the Product(s) is installed (iii) access to the Content storage device and (iv) access to the Authorized Users so that Licensor may properly train the Authorized Users.
- 4.5. Subscriber acknowledges that Licensor's Product (other than operating system) is the primary software on the device that Licensor's Product is installed on and that any Other Software is

considered secondary. Subscriber shall be solely responsible for any secondary software that conflicts with Licensor's Products. Licensor is not responsible for any loss of Content as a result of conflicts from Other Software.

## **5. LICENSOR GENERAL OBLIGATIONS**

- 5.1. Licensor shall provide the Products and services listed on Exhibit A.
- 5.2. Licensor shall, for the duration of the Subscription Term, promptly notify and provide Subscriber of free Product updates and upgrades that Licensor makes generally available to subscribers of the Products. Such free Product updates and upgrades do not include any custom development or implementation undertaken on Subscriber's behalf.
- 5.3. Licensor shall notify Subscriber as soon as reasonably feasible of any intended material change, discontinuation or addition to the Products listed on Exhibit A. Additional terms regarding Product may be described on Exhibit A.
- 5.4. Licensor shall perform the following duties: (i) assist Subscriber with any and all documentation required to execute this Agreement; (ii) assist Subscriber with the download and installation of Licensor's Products; (iii) train Subscriber and Authorized Users on the features and use of Licensor's Products; and (iv) provide support for Licensor's Products as described below.
- 5.5. Licensor shall provide the following support for the duration of the Subscription Term: (i) provide Licensor's contact information; (ii) respond within one (1) hour via phone or email from initial contact from Subscriber; (iii) contact and assist Subscriber with Product updates/upgrades; and (iv) train new Authorized Users.
- 5.6. Support required by Subscriber outside of normal business hours may incur additional costs to Subscriber.

## **6. TERMS OF PAYMENT**

- 6.1. At Licensor's discretion, Subscription Fees, reimbursable expenses, interest, and other costs for which Subscriber is obligated may be invoiced together or separately.
- 6.2. In the event of nonpayment or late payment by Subscriber, Licensor reserves the right to suspend the Subscription pending Subscriber's payment of all amounts in arrears or to terminate this Agreement in accordance with Section 12 below, and/or pursue other remedies permitted by law. Subscriber agrees to be responsible and liable for all collection costs, including reasonable attorney fees, incurred as a result of nonpayment of the Subscription Fees and/or reimbursable expenses, as well as for interest on past due sums at the lesser of the maximum legally chargeable interest rate or 12 percent per annum.
- 6.3. In the event of early termination of any Subscription or this Agreement, Subscriber agrees to pay Licensor compensation in an amount consisting of the following: (i) any amounts owed by Subscriber in the form of outstanding payments as of the time of termination; and (ii) fifty (50) percent of the total balance due of the remaining Subscription Term, capped to a maximum of six months, provided that (ii) shall not apply in the event of early termination by Subscriber for failure of Licensor to satisfactorily perform its obligations under this Agreement, as determined by the Subscriber.

## **7. RENEWAL**

7.1. Each Subscription associated with this Agreement shall remain in force for the duration of its Subscription Term, unless terminated in accordance with Section(s) 9 or 11 below. Licensor shall notify Subscriber of renewal terms ninety (90) days prior to the end of the Subscription Term. If a renewal Agreement is not in place by the end of the Subscription Term, the Subscription Agreement will renew automatically for a period equivalent to the length of the current Subscription Term at current pricing. Any renewal period shall be governed by the terms and conditions of this Agreement, unless modified by terms provided by Licensor to Subscriber prior to the commencement of a renewal term.

7.2. This Agreement shall remain in full force and effect for as long as any Subscription remains active.

## **8. VOLUNTARY SUSPENSION OF SUBSCRIPTION**

8.1. Whenever a situation may arise where Subscriber needs to suspend the operations for which a particular Subscription is used, Subscriber shall have the right to request that Licensor suspend any or all Subscriptions for a specified period of time without incurring early termination penalties and reactivation charges. The terms and conditions for suspension and reactivation of the Subscription(s) shall be made by a written instrument, agreed and signed by both Parties. At no time shall such a Voluntary Suspension be longer than ninety (90) calendar days.

## **9. TERMINATION OF SUBSCRIPTION**

9.1. The Parties may voluntarily terminate any Subscription prior to the expiration date of the Subscription Term, without indicating their reasons for termination, by serving written notice to the other Party no later than thirty (30) days prior to the date of termination. Access to and usage of the Products related to the terminated Subscription shall be prohibited as of the date of termination, except that Licensor agrees to provide to Subscriber a copy of all Content captured and stored through the use of Licensor's Products.. Upon termination, with respect to the Products related to the Subscription being terminated, Subscriber shall (i) discontinue all use of the Products, and components thereof; and (ii) if so required elsewhere in this Agreement or Exhibits, return or destroy any items relating to the Products (including but not limited to, media, software, hardware, and electronic and printed documentation). This shall not be construed as requiring the return or destruction of any Content.

9.2. Any remaining Active Subscriptions shall remain in full force unless terminated as provided herein.

## **10. REFUND**

10.1. In the event of voluntary termination of any Subscription(s) or this Agreement, Licensor shall refund to Subscriber the unused portion of the total Subscription Fee pre-paid by Subscriber for the Subscription Term for any Subscription(s) being terminated. The unused portion of the Subscription Fee shall be calculated beginning on the thirty-first (31) day after receiving written notice from Subscriber, less any amounts owed by Subscriber for unpaid fees as of the termination date.

## **11. TERMINATION OF AGREEMENT**

11.1. The Parties may voluntarily terminate this Agreement at any time, subject to the provisions of Section 10, by serving written notice to the other Party no later than thirty (30) days prior to the date of termination.

- 11.2. Licensor may terminate this Agreement without prior notice in the event of Subscriber's breach of any of the terms and conditions of this Agreement. Alternatively, Licensor may temporarily suspend any or all Active Subscriptions until the breach is cured, provided, however, that if Subscriber fails to cure the breach within thirty (30) days after receiving written notice, this Agreement shall automatically terminate without further notice. Access to and usage of the Product related to the suspended Subscription(s) shall be prohibited as of the date of suspension thereof, except as required by Subscriber to retrieve stored or archived Content. Upon termination of this Agreement, Subscriber shall (i) discontinue all use of the Product; (ii) if so required elsewhere in this Agreement or Exhibits, return or destroy any items relating to the Product (including but not limited to media, software, hardware, and electronic and printed documentation); and (iii) provide written notice to Licensor by mail, fax, or email, certifying that Subscriber has complied with this paragraph. This shall not be construed as requiring the return or destruction of any Content.
- 11.3. Licensor shall not be liable for any expenses incurred by Subscriber as a result of termination of this Agreement as a whole or any Subscription in particular.
- 11.4. The provisions and terms of this Agreement pertaining to the Parties' financial obligations and liability, proprietary rights, copyright protection, as well as Subscriber obligations relating to the termination procedures described herein and any other provision which by its nature should survive, shall remain in force after any termination of this Agreement as a whole or any Subscription in particular.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1. The Products, and other items supplied by Licensor may contain authorship materials, trademarks, word-marks and other materials that are protected by international conventions and national trademark and copyright laws. All proprietary rights and rights of ownership shall be reserved to their owners, including rights of authorship, creation of derivative works (including translation to foreign languages), inclusion in compilations and collective works, dissemination, and other rights. Subscriber shall refrain from claiming proprietary rights by virtue of access and use of the Products, and components thereof.

## **13. CONFIDENTIALITY**

- 13.1. If Licensor and Subscriber have signed a separate non-disclosure agreement, the terms of such non-disclosure agreement control and are incorporated herein. In the event that Licensor and Subscriber have not signed a separate non-disclosure agreement, Subscriber acknowledges that by reason of this Agreement herein it will have access to certain confidential information and materials concerning Licensor's business, plans, methodology, customers, technology, and Product, including without limitation certain information that Licensor considers to be trade secrets ("Confidential Information"). Subscriber agrees that, except in conjunction with the performance of its obligations contained herein, Subscriber will not use in any way for its own account or the account of any third party, nor disclose to any third party except as may be required by law, any such confidential information revealed to it in written or other tangible form or orally, and identified as confidential or which by the nature of the information or the context of its disclosure ought to be understood to be confidential, by Licensor without the prior written consent of Licensor. Subscriber shall take every reasonable precaution to protect the confidentiality of such information. Upon request by Subscriber, Licensor shall advise whether or not it considers any particular information or materials to be confidential. If Subscriber is required to make any disclosure of Licensor's

confidential information, to the extent it may legally do so, it will give reasonable advance written notice to Licensor of such disclosure.

#### **14. FORCE MAJEURE**

- 14.1. The Parties shall be absolved of liability for delays caused by events beyond the Parties' control. Such events shall include acts of natural phenomena, war, popular unrest, epidemics, fire, flood, earthquake and other natural disasters, failures in the operation of computer networks and communications systems, and disruptions in the operation of postal and courier services.

#### **15. DISCLAIMER OF WARRANTIES**

- 15.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR, ITS PARTNERS, AND SUPPLIERS PROVIDE THE INFORMATION AND THE PRODUCTS "AS IS" WITH ALL FAULTS AND DEFECTS THEREIN AND WITHOUT ANY WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, AND OF LACK OF NEGLIGENCE, ALL WITH REGARD TO THE INFORMATION, SERVICES AND PRODUCTS OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES FOR SUCH INFORMATION AND PRODUCTS OR OTHERWISE ARISING OUT OF THE USE OF THE INFORMATION, SERVICES, AND PRODUCTS. THE INFORMATION FURNISHED BY LICENSOR MAY BE USED SOLELY FOR REFERENCE PURPOSES IN THE PROCESS OF INFORMATION EXCHANGE AND SHALL BE USED IN ADDITION TO AND IN CONJUNCTION WITH APPLICABLE REQUIREMENTS OF LAWS, CODES, RULES, REGULATIONS, STANDARDS, AND OTHER REQUIREMENTS ESTABLISHED BY AUTHORITIES POSSESSING VARIOUS LEVELS OF JURISDICTION. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NONINFRINGEMENT WITH REGARD TO THE INFORMATION AND PRODUCT PROVIDED.

#### **16. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, AND CERTAIN OTHER DAMAGES**

- 16.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR, ITS PARTNERS, OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF CONTENT OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES FOR SUCH PRODUCT OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF LICENSOR, ITS PARTNERS, OR ANY SUPPLIER, AND EVEN IF LICENSOR, ITS PARTNER, OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBSCRIBER SHALL REFRAIN FROM

ASSIGNING LIABILITY TO LICENSOR FOR USAGE OF THE INFORMATION SUPPLIED, BASED ON THE CIRCUMSTANCE THAT LICENSOR MERELY SUPPLIES THE INFORMATION BUT DOES NOT GENERATE IT, UNLESS EXPRESSLY STIPULATED OTHERWISE.

## **17. LIMITATION OF LIABILITY AND REMEDIES**

17.1. NOTWITHSTANDING ANY DAMAGES THAT SUBSCRIBER MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED HEREIN AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT OR ANYTHING ELSE), THE ENTIRE LIABILITY OF LICENSOR, ITS PARTNER, AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT OR ANY THEORY OF LIABILITY SHALL BE LIMITED TO THE GREATER OF THE SUBSCRIPTION FEE ACTUALLY PAID BY SUBSCRIBER OR USD10.00. ANY CAUSE OF ACTION BY SUBSCRIBER WITH RESPECT TO ANY PRODUCT PROVIDED MUST BE INSTITUTED WITHIN THE TIME ALLOWED BY THE APPLICABLE STATUTE OF LIMITATIONS UNDER WASHINGTON STATE LAW. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **18. ASSIGNMENT OF RIGHTS**

18.1. Subscriber may not assign or sublicense the rights granted under this Agreement to any party, wholly or in part, without Licensor's prior written consent. Any unauthorized attempt by Subscriber to assign this Agreement or its rights and obligations under this Agreement to a third party shall be deemed null and void and contrary to the terms and conditions of this Agreement.

## **19. GOVERNING LAW**

19.1. This Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County, Washington.

## **20. ENTIRE AGREEMENT**

20.1. This Agreement, along with Exhibits and any attachments hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof. Unless specifically stated herein to the contrary, this Agreement does not apply to any other oral or written agreement between the Parties but supersedes all prior written and contemporaneous oral negotiations, discussions, commitments, and understandings ("Prior Agreements") with respect to the subject matter hereof. In the event any such Prior Agreement remains in effect to the extent required by applicable law, if there is a conflict between the provisions of this Agreement and such Prior Agreement, the provisions stipulated in the body of this Agreement shall control.

20.2. Failure by either Party to enforce any provision of this Agreement shall not be deemed a waiver of that provision or of any other provision of this Agreement.

## **21. NOTICES**

21.1. Notices by Parties may be given by means of electronic mail, fax, or by conventional mail, unless otherwise specified in this Agreement.

21.2. All notices to Licensor must be sent to the addresses listed on the following web page: <http://www.avcaptureall.com/PublicPages/Company/ContactUs/tabid/195/Default.aspx>

**22. PUBLIC RECORDS**

22.1 Licensor acknowledges that Subscriber is an agency governed by the public records disclosure requirements set forth in Chapter 42.56 RCW. Licensor shall fully cooperate with and assist the Subscriber with respect to any request for public records received by the Subscriber concerning any public records generated, produced, created and/or possessed by Licensor and related to the serviced performed under this Agreement. Upon written demand by the Subscriber, the Licensor shall furnish the Subscriber with full and complete copies of any such records within five business days.

Licensor’s failure to timely provide such records upon demand shall be deemed a material breach of this Agreement. To the extent that the Subscriber incurs any monetary penalties, attorneys’ fees, and/or any other expenses as a result of such breach, Licensor shall fully indemnify and hold harmless the City for such penalties, fees, and/or expenses.

For purposes of this section, the terms “public records” and “agency” shall have the same meaning as defined by Chapter 42.56 RCW, as said chapter has been construed by Washington courts. The provisions of this section shall survive expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized officers or representatives as of the date first above written.

**AV Capture All, Inc.**

**City of Buckley, WA.**

By: 

By: \_\_\_\_\_

Print Name: Chad Swanson

Print Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date: 12/02/2015

Date: \_\_\_\_\_

**EXHIBIT A**

**Business Terms**

**1. Subscription Term: January 1<sup>st</sup> 2016 – December 31<sup>st</sup> 2018 (36 Months)**

<b>Product/Service</b>	<b>Lic's</b>	<b>Unit Price</b>	<b>Extended Amt</b>
Subscription – Legislative/Judicial Basic	1	\$249. <sup>00</sup> /Mo	\$249. <sup>00</sup> /Mo
- Legislative Desktop Application (Audio-Only)			
- Judicial Desktop Application (Audio-Only)			
- Public Access – 1,000 Hrs			
- Archive – 5,000 Hrs			
- Support - Unlimited			
		<b>TOTAL:</b>	<b><u>\$249.<sup>00</sup>/Mo</u></b>
<b>Annual Payment</b>			
Total Annual Subscription Price (Monthly x 12)			<b><u>\$2,988.<sup>00</sup>/Yr</u></b>

**2. Licensor Representative:**

- Representative Name: Chad Swanson
- Representative Phone: **888-360-2822**
- Representative Email: [chad.swanson@avcaptureall.com](mailto:chad.swanson@avcaptureall.com)

**3. Subscriber Contact Information:**

- Agency: **City of Buckley, WA.**
- Authorized Representative Name: \_\_\_\_\_
- Authorized Representative Email: \_\_\_\_\_
- Mailing Address: \_\_\_\_\_
- Street Address: \_\_\_\_\_
- Phone: \_\_\_\_\_
- Fax: \_\_\_\_\_
- Administrative Contact Name: \_\_\_\_\_
- Administrative Contact Phone: \_\_\_\_\_
- Administrative Contact Email: \_\_\_\_\_
- Accounts Payable Name: \_\_\_\_\_
- Accounts Payable Phone: \_\_\_\_\_
- Accounts Payable Email: \_\_\_\_\_

## Subscription Description

The AVCA Legislative subscription includes **Software, Services & Support**.

**Software:** The software is a PC desktop application that handles the A/V recording, document integration/syncing, and publishing online. The application is designed for use by a clerk to record and publish meetings online easily and efficiently. The software provides an intuitive user interface enabling the Clerk to import Agendas, Minutes and all Council related documents. All documents are attached to the Audio/Video recording, indexed for searching, and published online for public access. Agenda topics are synchronized to the Audio/Video recording, enabling citizens to jump directly to topics of interest while viewing online. Council members' motions and votes are captured and synchronized to the recording as well.

**Services:** The Services include On-Demand Streaming (Public Access), Archiving (Authorized User Access), and Live Streaming (Public Access). Content that has been dropped into Archive may be made available for Public Access at Subscriber's discretion. Recorded meetings are accessed by the public through the Agency's website, while the content is hosted and streamed using AVCA's Content Distribution Network (CDN). Authorized Users have the ability to log into Subscriber's account to manage published content, make necessary changes, and access optional private sessions not intended for public viewing. Authorized Users have two levels of security; administrator and standard user. Administrative users can manage user accounts and all users can retrieve their own credentials if lost.

**Legislative Basic** - This package includes 100 hrs of on-demand content in Public Access, and 300 hrs of content in Archive. Sessions are recorded locally, then published to cloud storage for hosting, streaming, and public dissemination. Once the total has hit 100 hrs, newly published sessions get published in and the older sessions drop into Archive. Individual sessions can always be un-archived and the oldest in public access will drop into Archive to make room. Once the Archive total of 300 hrs is hit, the oldest sessions drop into 'dark storage' and are available to the customer upon request.

**Legislative Plus** - . This package includes 500 hrs of on-demand content in Public Access, 1,500 hrs of content in Archive, and 500 users per calendar month of Live Streaming. Sessions are recorded locally, then published to cloud storage for hosting, streaming, and public dissemination. Once the total has hit 500 hrs, newly published sessions get published in and the older sessions drop into Archive. Individual sessions can always be un-archived and the oldest in public access will drop into Archive to make room. Once the Archive total of 1,500 hrs is hit, the oldest sessions drop into 'dark storage' and are available to the customer upon request. Live streaming is limited to 500 users per calendar month, as defined by publicly addressable IP's. Live streaming is not shut off if the limit is breached, but is only monitored month-to-month. If consistently exceeded, the customer can upgrade to a higher plan.

**Legislative Unlimited** – This package has no limits to the services. All content will remain in Public Access for the duration of the subscription, with no sessions dropping into Archive unless chosen to do so by Subscriber. Live Streaming has no limits to the number of users accessing the stream.

**Support:** Support includes installation, training, upgrades/updates, and on-going user support for the duration of the subscription, with live customer support assistance between 5:00 AM PST/PDT – 9:00 PM PST/PDT. Contact for support is support@avcaptureall.com or 888-360-2822 x2.



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>Lease Agreement: Addendum #3 Ag Land Sublease Between the City and the Flying K-C Livestock.</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB16-016</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		
	Building Depart – Dean Mundy		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		X
Muni Court – Jessica Cash			
<b>Attachments:</b> Flying K-C Livestock Sublease Agreement Addendum and D			
<p>SUMMARY STATEMENT: The addendum being presented reflects changes to the existing Flying K-C Livestock (Ken Carel) Ag Land sublease for 2016 The addendum reflects lease rates for the property and buildings of \$8,230 along with the payment of State Leasehold Excise Tax of \$1,057 and a utility charge of \$640 for an annual total of \$9,935. The previous lease was approved by the Council for a one year period; however this new addendum extends the current lease for two years until January 31, 2018.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans & Utilities 1/19/16			
RECOMMENDED ACTION: <b>MOTION to Approve Addendum #3 to the Lease Agreement Between the City and the Flying K-C Livestock (Ken Carel) for Farm Land, Buildings and Facilities on the DSHS Ag Facility.</b>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

## Addendum to Agricultural Land Sublease

THIS ADDENDUM to the Agricultural Land Sublease (“ADDENDUM”) is in addition to (and incorporated therein by this reference) that certain Agricultural Land Sublease (“LEASE AGREEMENT”) between the City of Buckley (THE CITY), a Washington Municipal corporation, and Ken Carel, dba Flying K-C Livestock (“LESSEE”)

**WHEREAS**, pursuant to Section 20 of the LEASE AGREEMENT, the CITY and LESSEE jointly agree to amend the terms of the original LEASE AGREEMENT in order in order to amend Section 2 related to the Lease Term and Section 3 related to Payment of Rent and Leasehold Excise Tax;

**NOW THEREFORE,**

FOR AND IN CONSIDERATION OF the mutual promises, terms and conditions set forth in the LEASE AGREEMENT and contained herein, the Parties mutually agree as follows:

1. Section 2, Amended LEASE TERM.

This Lease shall be for a term of Two (2) years, commencing on the 1<sup>st</sup> day of February, 2016. The Lessee shall be subject to earlier termination as provided in sections 21 and 22 herein.

2. Section 3, Amended PAYMENT OF RENT AND LEASEHOLD EXCISE TAX.

a. Rent. LESSEE shall pay THE CITY rent for the Property in the amount of **\$8,230.00 plus LET and share of utility costs** as shown below and in Exhibit D (attached), Lease Rates. Payments are due per the following schedule:

Payment Due Date	Rent	Leasehold Excise Tax	Utilities*	Totals	Late Payment Penalty
February 1, 2016	\$2,716	\$349	\$214	\$3,278	\$184
July 1, 2016	\$5,514	\$708	\$434	\$6,656	\$373
<b>Total</b>	<b>\$8,230</b>	<b>\$1,057</b>	<b>\$648</b>	<b>\$9,935</b>	
February 1, 2017	\$2,716	\$349	\$214	\$3,278	\$184
July 1, 2017	\$5,514	\$708	\$434	\$6,656	\$373
<b>Total</b>	<b>\$8,230</b>	<b>\$1,057</b>	<b>\$648</b>	<b>\$9,935</b>	
<p><b>*Note:</b> Buildings that either, are not connected to power or that need extensive repair will not be required to pay the electrical utility charge until power is actually available and working at the building. The three buildings leased by the tenant fall under this category and are not charged; however, the tenant has expressed a desire to install wiring and extend electricity to one of the three at his cost. Due to this investment in permanent infrastructure which the City will benefit from long term the fee for electric service will be waived for the 2<sup>nd</sup> year of this agreement.</p>					

All payments shall be sent to:

City of Buckley  
Attention: Finance Department  
P.O. Box 1960  
Buckley, WA 98321

b. Leasehold Excise Tax. LESSEE shall also be responsible for the applicable Leasehold Excise Tax ("LET") for the lease of the Property. LESSEE shall submit payments equal to the LET amount due to THE CITY at the address above, per the payment schedule in Section 3 (a). The current LET rate is **12.84%** of the total Lease amount prior to offsets. LESSEE agrees to be responsible for any adjustments to the LET amount required by the Washington State Department of Revenue.

c. Overdue Rent. The LESSEE's failure to pay rent within 30 days after the due date shall be a default of the Lease, and THE CITY may then pursue remedies as provided in Section 22, Remedies for Default. Rent payments received after 30 days following the due date shall include the late penalty and interest charges.

The LESSEE shall pay THE CITY a late charge of six percent (6%) of the amount of any rent payment received by THE CITY more than 30 days after the due date.

The LESSEE shall pay THE CITY interest at the rate of one percent (1%) per month, beginning on the date such rent is due and until the rent is paid, for any rent payment received by THE CITY more than 30 days after the due date.

3. Effect of Addendum. This ADDENDUM is in addition to the LEASE AGREEMENT. The provisions of this ADDENDUM modify the basic LEASE AGREEMENT. Except as otherwise provided herein, each provision of the LEASE AGREEMENT shall continue in full force and effect as if this addendum did not exist.

IN WITNESS WHEREOF, the parties have caused this ADDENDUM to be signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

**KEN CAREL dba  
FLYING K-C LIVESTOCK**

**CITY OF BUCKLEY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
**Pat Johnson**

**Owner**  
\_\_\_\_\_  
Title Date

**Mayor**  
\_\_\_\_\_  
Date

**Exhibit D Lease Rates (Addendum #3) City of Buckley Ag Land Lease (Carel) January, 2016**

Lease Area	Acreeage	Rate per acre/yr	Annual Amount	
NW Lease Area (Fields 1, 2 & 3)	42	\$165	\$6,930	<b>DRAFT</b>
NE Lease Area (Field #5)	5	\$110	\$550	
<b>Subtotal</b>	<b>47</b>	<b>\$159</b>	<b>\$7,480</b>	
Buildings	3	\$250	\$750	
<b>Total Rate</b>	<b>47</b>		<b>\$8,230</b>	
Leasehold Excise Tax			\$1,057	
<b>Proportionate Utility Cost</b>	<b>Per Bldg</b>	<b>SubTotal</b>	<b>Utility Total</b>	
*Annual Power/Bldg (est)	\$327	N/A	\$0	
Annual Water/Bldg	\$216	\$648	\$648	
<b>Utilities</b>	<b>\$543</b>	<b>\$648</b>	<b>\$648</b>	
<b>Total Annual Rent and Tax</b>			<b>\$9,935</b>	

**\*Note:** Buildings that either are not connected to power or that need extensive repair will not be required to pay the electrical utility charge until power is actually available and working at the building. The three buildings leased by the tenant fall under this category and are not charged; however, the tenant has expressed a desire to install wiring and extend electricity to one of the three at his cost. Due to this investment in permanent infrastructure which the City will benefit from long term the fee for electric service will be waived for the 1st year of this agreement.

**Payment Schedule 2016 - 2017**

Due Date - 1st Year	Rent	LE Tax:	Utilities	Total	Late Rent Penalty
February 1, 2016	\$2,716	\$349	\$214	\$3,278	\$184
July 1, 2016	\$5,514	\$708	\$434	\$6,656	\$373
<b>Totals</b>	<b>\$8,230</b>	<b>\$1,057</b>	<b>\$648</b>	<b>\$9,935</b>	<b>\$557</b>
Due Date - 2nd Year	Rent	LE Tax:	Utilities	Total	Late Rent Penalty
February 1, 2017	\$2,716	\$349	\$214	\$3,278	\$184
July 1, 2017	\$5,514	\$708	\$434	\$6,656	\$373
<b>Totals</b>	<b>\$8,230</b>	<b>\$1,057</b>	<b>\$648</b>	<b>\$9,935</b>	<b>\$557</b>



# CITY COUNCIL AGENDA BILL

City of Buckley  
PO Box 1960  
Buckley, WA 98321

ITEM INFORMATION			
<b>SUBJECT: Agreement- 2016-2017 Operating Engineer's Local #286 Bargaining Unit Contract &amp; MOU</b>	<b>Agenda Date: January 26, 2016</b>		<b>AB16-017</b>
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson	X	X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	PW Depart - John Dansby		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
Muni Court – Jessica Cash			
<b>Attachments:</b> Memo, Contract w/markups & MOU			
SUMMARY STATEMENT: See attached			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: <b>MOTION to Approve the 2016-2017 Labor Agreement Between the City and the Local #286 Operating Engineer's for PW and Clerical Employees and the MOU Regarding New Positions and Contracting of Cemetery Services.</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

# City of Buckley

P.O. Box 1960, Buckley WA 98321

Phone: 360-829-1921 ext 200

Fax: 360-829-2659



# Memo

To: Mayor & City Council

Date: January 21, 2016

RE: 2016-2017 Local #286 Contract

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Terms and/or changes to the bargaining unit agreement between the City and the Operating Engineer's Local #286 are as follows;

1. Duration of the contract shall be for 2 years beginning January 1, 2016.
2. Amends Subsection 4.1 to modify how seniority is calculated for covered employees.
3. Amends Article 6 to add uniform language for the code enforcement officer.
4. Amends Article 7 to clarify work schedules.
5. Amends Subsection 11.8 to change maximum accruals to 280 hours to reflect 10 hour day work schedules. The previous maximum was 240 hours with 30 days. The change makes it 280 hours with 28 days.
6. Amends Subsection 18.1 to revise payroll deduction language.
7. Amends Subsection 22.1 to revise departments affected.
8. Amends Article 26 regarding when the contract can be re-opened
9. Amends Article 27 to remove natural gas references.
10. Appendix A.1 –
  - Wages 2.0% increase in 2016 and an increase of 3.0% in 2015 and in 2016 a one quarter of one percent (.25%) and then additionally by one hundred percent (100%) of the percentage increase in the Consumer Price Index for Seattle,

Tacoma, Bremerton with a minimum increase of not less than one percent (1%) and a maximum increase of no more than five percent (5%); and

11. Appendix A.2 – increases longevity pay to match the Police Guild contract.
12. Appendix B – deletes references to a natural gas apprentice.
13. MOU – and agreement and understanding that the City has the authority to contract service for operation and maintenance of the cemetery in exchange for increasing the .5 FTE in Parks to full-time and adding a new PW position as discussed in the 2016 budget.

# A G R E E M E N T

by and between

CITY OF BUCKLEY

and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
LOCAL NO. 286

Representing the Public Works Employees

January 1, [2016](#) through December 31, [2017](#)

COLLECTIVE BARGAINING AGREEMENT  
 By and Between  
 CITY OF BUCKLEY  
 and  
 INTERNATIONAL UNION OF OPERATING ENGINEERS  
 LOCAL NO. 286

(Representing the Public Works Employees)  
 January 1, 2016 through December 31, 2017

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Vacation.....	Article 11
Wages .....	Article 21

A G R E E M E N T  
By and Between  
CITY OF BUCKLEY  
and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 286

January 1, 2016 through December 31, 2017

**PREAMBLE**

THIS AMENDED AGREEMENT is made and entered into between the CITY OF BUCKLEY ("Employer"), and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286 ("Union").

**ARTICLE 1 UNION RECOGNITION**

- 1.1 The Employer recognizes the Union as the exclusive bargaining agent in all matters relating to wages, hours and conditions of employment for all permanent Utility Department employees in the Public Works Department, and the office clerical staff employees at City Hall, except the Public Works Director and Finance Director. Also covered under the terms of this Agreement is the Utility Maintenance Apprentice position(s) which are designed as training program(s) as specified in Appendix B of this Agreement. Excluded are temporary, casual, on-call employees, seasonal employees working less than seven (7) months and senior aides.
- 1.2 All collective bargaining with respect to wages, hours, working conditions, benefits, and other conditions of employment shall be conducted by authorized representatives of the Union and authorized representatives of the Employer. Agreement reached between the two parties to the Agreement shall become effective only when signed by the designated representatives of the Union and the Mayor, with consent of the City Council.
- 1.3 Except as provided in Article 1.1, the Employer agrees that it shall not employ more than four (4) part-time and/or seasonal employees working more than 80 hours per month each. Employees not excluded under Article 1.1 and working more than 80 hours per month, over four (4) consecutive months, shall be included in the bargaining unit. The Employer and the Union agree to meet and negotiate wage rate and placement for any new job classification.

**ARTICLE 2 MEMBERSHIP**

- 2.1 All present employees covered by this Agreement shall, as a condition of employment, remain members of the Union in good standing. All future employees in the bargaining unit shall be required to become and remain union members thirty-one (31) calendar days after being employed. Employees who fail to comply with this requirement shall be suspended by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union. In the event an employee has a bona fide religious objection to the payment of fees and dues necessary for the Union membership he/she may comply with RCW 41.56.122.

**ARTICLE 3 PROBATION PERIOD**

- 3.1 A new employee shall serve a probationary period during which time he/she shall have no seniority rights. Upon successful completion of the probationary period the employee shall be classified as a regular employee and shall be credited for all seniority acquired during the probationary period.

- 3.2 The probationary period shall be limited to one (1) year for all lead and supervisory employees and six (6) months for all others. After that time an employee shall be made permanent or terminated.

In the event that the employee is ill, disabled, on maternity leave or otherwise unable to perform his/her duties for a significant period of time during the probation period, the probationary period of one year may be extended by the length of time which an employee is absent from work. A significant absence shall be any absence in excess of 20 calendar days during the year.

#### **ARTICLE 4 PROMOTION/LAYOFF/RECALL/TRANSFERS**

- 4.1 **Seniority** — ~~Effective January 1, 2015, seniority shall be measured by~~ ~~consist of~~ continuous service of the employee with the Bargaining Unit ~~beginning January 1, 2015.~~ No employee shall have his/her seniority established prior to completing six (6) months of continuous employment with the Employer. Upon completion of the probationary period, the employee shall be credited for all seniority acquired during the probationary period. The employee's earned seniority shall not be lost because of absence due to illness or injury or authorized leave of absence. The seniority list shall be brought up to date each year on or about January 1, and posted in the Maintenance Shop by the City Clerk.
- 4.2 **Job Openings** — When a position is open in the bargaining unit, notice of the opening shall be posted for five (5) consecutive work days so that interested employees may submit a written bid for the position.
- 4.3 **Promotions** — Promotions to a higher job classification shall be according to seniority and ability, work record and merit. It shall be the policy of the Employer to promote to supervisory positions, insofar as possible, from the ranks of the employees.
- 4.4 **Layoff** — When it is necessary to reduce the work force, employees shall be laid off from the bottom of the seniority list. Consideration may be given to individuals with specialized skills. This consideration shall be discussed between the Union and the Employer as to whether the work performed by this employee could be adequately performed by an employee of longer service. Temporary, seasonal and part-time employees will be laid off prior to any regular full-time employees.
- 4.5 **Recall from Layoff** — A regular employee shall be placed on the layoff list for a period of one year. If, at the end of this period, he/she has not been called back to work, his/her name shall be dropped from the list. In recalling a person back to work after a layoff, the last person laid off shall be the first person called back. In calling an employee back to work from the layoff list, the Employer shall send notice to the employee by certified mail at his/her last known address. The Employer may also contact the employee by telephone, but shall also send notification by certified mail. If a person does not reply to these notices within five (5) working days of delivery by reporting for work or presenting a reasonable explanation, he/she shall be dropped from the layoff list.
- 4.6 **Transfers** - full-time employees who have met the probationary requirements of this agreement may bid for a vacant position covered by this agreement subject to the following terms and conditions;
- 4.6.1 Selection of a transferee to a position classification shall be according to seniority and ability, work record and merit.
- 4.6.2 An existing journey level employee who has completed and currently maintains all of the certifications/training required for another position may apply for transfer into another journey level position with the consent of the city subject to the selection criteria in section 4.6.1. An employee selected

for transfer pursuant to this section will continue to receive salary and benefits at his/her current level, but will be required to serve a 6 month probationary period to adequately demonstrate their ability to perform the job duties of the new position classification.

- 4.6.3 An existing employee who has met the probationary requirements of the position classification currently assigned, but who has not completed or obtained all of the certifications/training required for another position may apply for transfer into a vacant position as an apprentice under the terms of Appendix B to include pay, probationary status and termination. Upon successful completion of the certification/training requirements of the new position classification transferred employees shall be eligible for re-instatement back to the pay level that they were at prior to accepting transfer to a new position classification. The employee shall not be eligible for reimbursement of any pay and/or benefits surrendered during participation in an apprentice program.
- 4.6.4 Transferred employee(s) who fail to perform satisfactorily or complete the certification/training requirements of the apprenticeship program may be transferred back to his/her pre-transfer position, provided a vacancy exists. If a vacancy does not exist in the pre-transfer position, the employee may be separated from employment.
- 4.6.5 All new applicants hired by the City to a vacant position within the Public Works Department shall automatically be assigned to and be required to complete an apprenticeship under the terms of Appendix B.

## **ARTICLE 5 GRIEVANCE PROCEDURE**

- 5.1 **Grievance Defined** — A grievance is defined as any dispute concerning the interpretation or application of an express provision of this Agreement.
  - 5.1.1 *Step A* — Within thirty (30) calendar days of the grievance, the grievance shall be presented by the employee to his/her immediate supervisor. If the employee desires, he/she may be represented by the shop steward. The supervisor will respond to the employee on his/her grievance within ten (10) calendar days.
  - 5.1.2 *Step B* — If the grievance cannot be settled in Step A, then the employee may have the grievance presented by the Union representative to the Immediate Supervisor and/or Department Superintendent within fifteen (15) calendar days of the response in Step A. It shall be reduced to writing for such purpose, indicating the section of the Agreement allegedly violated, the facts of the case, and the remedy requested. The Superintendent will meet with the Union representative to discuss the grievance and respond to the grievance within fifteen (15) calendar days of the receipt of the written grievance in Step B.
  - 5.1.3 *Step C* - If no settlement is reached after Steps A and B, the grievance shall be presented in writing for consideration within fifteen (15) calendar days at a meeting between the Employer and the Union representative. If the Employer and the Union are unable to resolve the grievance, an arbitrator may be requested from the Public Employment Relations Commission. The arbitrator shall render his/her decision within thirty (30) calendar days of the final day of the arbitration hearing, and the arbitrator's decision shall be final and binding upon both parties. There shall be no cessation of work pending such decision.
  - 5.1.4 *Step D* — Any settlement arrived at pursuant to Step C shall be reduced to writing and, after acceptance, copies shall be provided for the Union representative, the Department Superintendent, and the employee involved. The time limits specified within this grievance procedure may be extended by written mutual agreement of the Employer and the Union. Should the employee fail to meet specific time limits, the grievance shall be deemed abandoned, waived and released. Should the Employer fail to meet a specific

time limit, as provided in this grievance procedure, without mutual agreement to extend such time limit, the grievance shall automatically move to the next step.

## **ARTICLE 6 CLOTHING AND EQUIPMENT**

- 6.1 The Employer shall provide an allowance of \$300 per year per Utility Department employee for protective clothing and accessories. Employees are required to select clothing and accessories from an approved list and the City will be invoiced for the purchase up to the maximum amount per year or the employee may apply for reimbursement of out-of-pocket expenses for an item on the list. The clothing allowance shall be available in January of each calendar year for the employee's use.
- 6.2 Employee eligibility for this **Utility Department** clothing allowance requires that the employee wear a uniform shirt of an approved style with the City's insignia and employee's name. The City agrees to purchase six shirts for each newly hired employee. After this initial issue all uniform shirts shall be replaced by the City on an "as needed" basis. Employees shall be required to return worn and/or damaged shirts to the City for exchange on a one to one basis not to exceed five in any calendar year.
- 6.3 Employees hired to the code enforcement position to which this Agreement applies shall be issued two (2) complete uniforms at the time of hire. After this initial issue all uniforms shall be replaced by the City on an "as needed" basis. Employees shall be required to return worn and/or damaged uniforms or parts thereof to the City for exchange on a one to one basis not to exceed two in any calendar year. All uniforms shall be and remain City properties and shall be returned upon employment termination.
- 6.4 Cleaning Allowance –employees hired to the code enforcement position covered by this agreement hired prior to June 1, of any contract year shall receive seventy five dollars (\$75.00) each year to defray the expense of cleaning the uniforms.

## **ARTICLE 7 HOURS OF WORK AND OVERTIME**

- 7.1 **Work Week Defined** — The normal work week shall consist of **four (4)** ~~five (5)~~ consecutive days **Monday-Thursday, or Tuesday-Friday** ~~(Monday through Friday)~~ followed by **three (3)** ~~two (2)~~ consecutive days off **Friday-Sunday or Saturday – Monday** ~~(Saturday and Sunday)~~. All hours required by the Employer to be worked in excess of **ten (10)** ~~eight (8)~~ hours per day, forty (40) hours per week shall be overtime and paid at one and one-half (1-1/2) times the employee's regular straight time hourly rate of pay with the exception of Sundays which shall be considered as premium and paid at a rate of two (2) times the employee's regular straight time hourly rate of pay and Holidays which shall be paid at a rate of two and one-half times the employee's regular straight time hourly rate of pay for the actual time worked. Employees assigned to alternate shifts pursuant to Section 7.3 shall not be subject to the Sunday premium pay provision. Sick leave, vacations and holidays shall be counted as time worked for the purpose of computing overtime.
- 7.2 **Meal Period** — Employees requested to work overtime immediately following their normal work day shall receive a hot meal after working a minimum of two (2) hours. The maximum per person will be \$12.00 per meal.
- 7.3 **Alternate Work Schedules and Utility Department — Seasonal Hours**

Nothing in this Agreement shall preclude the Public Works Director and the employee(s) from mutually agreeing to alternate work schedules, or times as specified below.

**Work Schedules.** The normal work schedule of the City is the Four/Forty Schedule. Depending on the needs of the City and the interests of the employees, employees may be authorized to work one of the schedules listed below:

1. **Five/Eight (5/8) Schedule.** Eight hours per day, five days per week. Generally, employees will be assigned to work either 8:30 a.m. to 5:00 p.m. with a ½ hour unpaid lunch period, or 8:00 a.m. to 5:00 p.m., with a 1 hour unpaid lunch period.

~~2.~~ **Four/forty (4/40) Schedule.** Under this schedule, employees work four 10-hour days. The fifth day is a day off. Generally the schedule will be Monday-Thursday, or Tuesday-Friday, but may be varied depending on the needs of the City. Generally, employees will be assigned to work 7:00 a.m. to 5:30 p.m. with a ½ hour unpaid lunch period, or ~~7:30 a.m. to 6:00 p.m.~~ **6:30 a.m. to 5:00 p.m.** with a ½ hour unpaid lunch period.

3. **Nine/eighty (9/80) Schedule.** This schedule allows employees to work their usual number of hours in a 2 week period (80 hours in 9 days). The tenth day is off. Generally, employees will be assigned to work four (4) nine (9) hour days during a seven (7) day period and four (4) nine (9) hour days and an eight (8) hour day for the adjoining seven (7) day period. Normal working hours are either 7:30 a.m. to 5:00 p.m. with a ½ hour unpaid lunch period, 8:30 a.m. to 6:00 p.m. with a ½ hour unpaid lunch period, 7:00 a.m. to 5:00 p.m., with a 1 hour unpaid lunch period, or 8:00 a.m. to 6:00 p.m., with a 1 hour unpaid lunch period. This schedule normally provides every other Friday off. To earn the 10<sup>th</sup> day off, employees work nine-hour days Monday through Thursday, giving them 36 hours. Then on Friday, they work a regular eight-hour day, four hours of which count for the first week and the other four for the next week. On the second week, they again work Monday through Thursday for nine hours each day, giving them 80 hours for the two weeks, and the 10<sup>th</sup> day (Friday) off.

a) 9/80 Work Schedule Explanation. Consideration of the option for an employee to operate under a 9/80 work schedule shall be subject to the discretion of the ~~Department Head and~~ **Mayor**. For clarification purposes a 9/80 work schedule as referred to in this document is a work schedule covering a 14-day work cycle period in which an employee is assigned to work four (4) nine (9) hour days during a seven (7) day period and four (4) nine (9) hour days and an eight (8) hour day for the adjoining seven (7) day period.

Shifts will be scheduled with starting and stopping times as directed by the ~~Department Head and~~ **Mayor**. Only those employees authorized by the Mayor will be able to participate in the 9/80 work schedule. The City reserves the right to schedule personnel on or off of the 9/80 work schedule as necessary. Should any employee on the 9/80 plan become ill or injured requiring time off from the job or modified job duties, that employee may be assigned to a five (5) day, forty (40) hour work week.

In compliance with Fair Labor Standards Act (FLSA), the City will establish a new work period for employees participating in the 9/80 work schedule. For the purposes of FLSA compliance, the work week is defined as beginning at the mid-point of the eight (8) hour day during the first seven (7) day work period, whether Friday or Monday. The second seven (7) day work period begins at the mid-point of the scheduled day off, whether Friday or Monday.

The purpose of defining the workweek as beginning in the middle of an 8-hour shift is to allocate hours so that the employee is not working more than 40 hours per workweek, and thus, is not accruing an entitlement to overtime pay for hours worked in excess of 40 hours per week. The employee will be required to acknowledge that he or she understands this allocation of hours, and that no overtime hours will be accrued, before being allowed to work this shift

**4. Accruing and Using Sick Leave, Vacation Leave and Holiday Pay While On An Alternative Work Schedule.**

a) Sick leave and vacation leave will continue to accrue at the regular rate. When an employee takes a full day of sick or vacation leave, the time charged will be equivalent to the full number of hours the employee was scheduled to work. This compensates for actual time absent for regularly scheduled work hours. For example, an employee accruing eight (8) hours per month in sick leave is absent for a full day that he/she is scheduled to work ten (10) hours. The time charged for sick leave would be ten (10) hours.

b) When a paid holiday falls on an employee's regularly scheduled work day, the employee will be paid ten (10) hours of holiday pay. ~~If the regularly scheduled work day is greater than eight (8) hours, the employee may be required to use either accrued vacation time or, if approved by the supervisor, to make up the time during the work week. In making up the additional time the employee may elect to adjust their work schedule within the same work week. As an example; when a Holiday falls on a Monday, an employee on a Monday through Friday, 4/40 schedule may elect to change their schedule to work the next (4) days, Tuesday – Friday at a normal (8) hour shift to make up the (2) hour time difference.~~

c) When a paid holiday falls on an employee's regular day off, the employee will be credited with ten (10) hours of holiday pay which may be used at a later date. Any accrued paid holiday hours must be utilized in the calendar year in which they have been earned. Accrued holiday hours not used by December 31st of each year will be lost to the employee; however accrued holiday hours earned in November or December of each calendar year may be carried over into the following year, but must be used by March 31 of that following year.

**5. Lunch and Break Periods.** The current practice of two (2) fifteen (15) minute paid breaks and one-half (1/2) hour unpaid lunch period shall remain in effect.

**6. Limitations.** The union and employee's agree that service under any alternate schedule will not result in the employee's entitlement to overtime pay on account of working this schedule. If an employee works more than 9 hours a day under a 9/80 schedule or 10 hours under a 4/10 schedule overtime rules shall apply.

**7. Modifications.** Modifications in shifts are made at the sole discretion of the ~~Department Head and Mayor~~ and should the 9/80 or 4/40 prove to be financially or otherwise unfeasible or not the most efficient means of service delivery, the City reserves the right to immediately cancel the 9/80 or 4/40, upon notifying the employee of such an intent

**7.3.1 Alternate Work Schedules for Clerical Staff** – The clerical staff may elect to modify their schedule according to the alternate work schedule as agreed upon between the City and the employee, and must be for a period of six (6) months or longer.

**7.4** These hours may be modified for specific jobs which may be necessary outside these times, such as street sweeping ~~and natural gas recorder readings~~. This provision shall not be used to circumvent the overtime provisions of this article.

**7.5 Callback** — Insofar as possible, regular shift shall be maintained. However, when an employee is called in for emergency work during off hours and after leaving his/her regular place of work, he/she shall receive

not less than three (3) hours pay at the employee's regular straight time hourly rate of pay plus the appropriate pay for all other time worked beyond the minimum of two (2) hours.

7.5.1 **Standby/On call** — While on Standby duty the designated employee will be required to carry a City issued pager and be required to respond to any and/or all callouts during their assigned period. Qualified individual employees are designated as standby for callback on a rotating basis for those non-working hours beyond their normal shift including weekends. Standby employees must return to the workplace (if the situation requires) within 30 minutes of being contacted by pager or telephone and be physically and/or mentally capable to perform their job. During standby duty the employee will receive standby pay of \$2.00/hr for all non-working hours and callback pay pursuant to Section 7.5 of the Collective Bargaining Agreement for any period for which the employee reports back to the City in response to a callout. Rotation schedules shall be developed and maintained by department supervisors.

7.6 **Overtime** — Overtime work shall be divided equally when possible.

7.6.1 Compensatory time at the rate of one and one-half (1-1/2) times the employee's regular straight time hourly rate of pay for overtime worked may be granted in lieu of pay if requested by the employee and agreed to by the Employer.

Compensatory time may be accrued to a maximum of eighty (80) hours. Compensatory time in excess of eighty (80) hours will be paid as overtime within the same period that the eighty (80) hour limit has been exceeded. Employees should be encouraged to use compensatory time accrued within ninety (90) days of earning it whenever possible. Upon termination, unused compensatory time will be paid at the current rate on the final paycheck.

## **ARTICLE 8 HOLIDAYS**

8.1 The Employer shall recognize the days listed below as paid holidays, provided the employee worked his/her regularly scheduled work day before and regularly scheduled work day after the holidays, unless on paid sick leave or vacation. A doctor's certificate may be required at the discretion of the Employer for sick leave taken the day before or the day after a paid holiday, verifying the illness of the employee, provided that the request of a doctor's certificate be made at the time the employee requests sick leave.

Holidays shall be:

New Year's Day	Martin Luther Kings Birthday
President's Birthday	Federal Memorial Day
Independence Day	Labor Day
Federal Veteran's Day	Thanksgiving Day
Day after Thanksgiving Day	Christmas

Two (2) floating days to be specifically and mutually agreed to between each employee and the Employer.

8.1.1 If a paid holiday falls on Saturday, the preceding Friday shall be observed as the holiday and, if the paid holiday falls on Sunday, the Monday following shall be observed as the holiday, unless otherwise mutually agreed to by the Employer and the employees.

8.2 Holiday time off begins at the close of the work day preceding the holiday and ends at the starting time of the work day following a holiday.

- 8.3 All work performed on these holidays shall be paid at one and one-half (1-1/2) times the employee's regular straight time hourly rate of pay plus the normal holiday pay. Payment of time and one half for holiday work shall not be used to offset the overtime within the work week.

## **ARTICLE 9 SICK LEAVE**

- 9.1 Sick Leave for regular full-time employees shall accrue at the rate of one working day for each calendar month of service to a total of one thousand seven hundred sixty (1,760) hours. When an employee is absent due to illness or injury, he/she must report sick leave to his/her supervisor as soon as possible, but not later than 15 minutes prior to the start of his/her regularly scheduled shift except for emergency. If notice is not so given, the Employer may take the appropriate disciplinary action. The Employer may require a doctor's certificate for any sick leave taken, provided that the request of a doctor's certificate be made at the time the employee requests sick-leave.
- 9.2 Upon retirement in a recognized retirement system, an employee shall receive pay at his/her regular wage rate for 25% of unused accumulated sick-leave as severance pay; provided, however, upon termination from City employment for any reason other than for cause, twenty-five percent (25) of unused sick leave shall be paid to an employee with five years or more of city employment. Employees shall be eligible for this benefit as a result of retirement, voluntary separation or involuntary layoff but shall not be eligible if terminated for cause. Compensation shall be based upon the employee's salary at the time of separation. Moneys received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state. Every three (3) months a list shall be posted of all sick leave earned.
- 9.3 When an employee is receiving industrial insurance compensation, the Employer shall continue to pay the employee's regular salary from the employee's accumulated sick leave, provided the employee shall reimburse the Employer the amount of such industrial insurance compensation immediately upon receipt by the employee. The employee will continue to receive all benefits addressed in this Agreement while receiving industrial insurance compensation until such time as all sick leave benefits have been exhausted. The employee will retain the right to self-pay medical and dental insurance premiums at the group rate to the Employer while on industrial insurance compensation.
- 9.4 Sick leave may be used for any of the following reasons and purposes:
- (a) Personal illness or incapacity of the employee
  - (b) Forced quarantine of the employee by a public health official
  - (c) As set forth in RCW 49.12.270, family leave
  - (d) Preventative health care of the employee
  - (e) An illness, injury or preventative health care of an immediate member of the employee's family which requires the employee's attendance subject to the City's Personnel Policy & Procedures Manual

## **ARTICLE 10 FAMILY ILLNESS OR BEREAVEMENT LEAVE**

- 10.1 Family illness or bereavement leave shall be granted up to a maximum of five (5) days leave with pay per work year for family illness and five (5) days per occurrence for bereavement leave. This section applies when absence from work is required because of serious illness or death of a member of the immediate family. Serious illness is defined pursuant to Section 6.09.02 (c) of the City Personnel Policy and Procedure Manual and immediate family of the employee is defined pursuant to Section 2.24 of the City Personnel Policy and Procedure Manual. Family illness and bereavement leave shall be non-accumulative.

10.2 **Extended Travel:** An employee may request two (2) additional days leave for extended travel in conjunction with family illness and bereavement leave if extended travel is required. This request must be approved by the employee's Superintendent and will be charged to: (a) sick leave, if any accrued; or in its absence, (b) vacation leave if accrued; otherwise (c) leave without pay.

**ARTICLE 11 VACATION**

11.1 Vacation for full-time employees shall be credited as follows and may be used as accumulated, subject to the provisions set forth in subsequent sections of this Article. Fractions of vacation days accumulated shall not be taken, but will be carried forward.

Years of Service	Monthly Accrual	Total Annual
0 to 12 months	1 day	12 days
1 year	1 day	12 days
2 years	1.08 days	13 days
3 years	1.17 days	14 days
4 years	1.17 days	14 days
5 years	1.25 days	15 days
6 years	1.25 days	15 days
7 years	1.33 days	16 days
8 years	1.33 days	16 days
9 years	1.5 days	18 days
10 years	1.5 days	18 days
11 years	1.58 days	19 days
12 years	1.58 days	19 days
13 years	1.67 days	20 days
14 years	1.67 days	20 days
15 years	1.83 days	22 days
20 years	2.08 days	25 days

11.2 New employees shall serve a six (6) month probation period during which time they will not be eligible to take earned vacation. Upon successful completion of the probation period, the employee will be credited with vacation on the pro-rated basis of one (1) day of vacation per month of service from the date of employment.

11.3 Permanent part-time employees will receive vacation pro-rated according to the number of hours worked in the regular work day.

11.4 Days worked and days for which pay is received by reason of sick leave, family illness, bereavement leave, industrial insurance compensation, paid vacation time or holidays shall be counted in computing vacations.

11.5 If a holiday occurs during an employee's scheduled vacation, the day that the employee is absent shall be charged as a holiday and not as vacation time.

11.6 Vacations will be scheduled at the request of the employees by seniority, unless such vacation time would disrupt the normal operation of the Employer. Seniority vacation requests must be in by March 31. Seniority vacation shall be for one time only each year.

11.7 After an employee has been assigned a date for his/her vacation period, such date shall not be arbitrarily

changed without notice and a mutual agreement between the employee and his/her superintendent; provided, however, in the event that if no employee available has the skills to provide emergency services, the City may then cancel previously scheduled vacations without the consent of the affected employee.

- 11.8 Vacation time may be accrued only to a maximum of ~~240~~ 280 hours (~~30~~ 28 days), except under unusual circumstances and with approval of the department manager and the City Administrator. Any unapproved accrual beyond the ~~240~~ 280 hour limit will be forfeited by the employee December 31 of each calendar year.
- 11.9 Employees may elect to take a portion of their annual carryover balance of vacation time in cash as opposed to taking the time off. The Salary Schedule will be used to determine the hourly rate of when the time was earned and the employee will be paid that equivalent in cash. The employee may exercise the option to buy back vacation hours up to two times in each calendar year. The employee may elect to buy back up to forty (40) hours in June and forty (40) hours in December or the full eighty (80) hours in December. The decision to exercise the option must be made and submitted to the Finance Director prior to May 30 for a June buy back or November 30 for a December buy back. The buy/back payment(s), if chosen, will occur in June and/or December of the year in which the request is submitted. The maximum hours that may be exercised for vacation buy-back is eighty (80) hours in any calendar year, on an hour for hour basis.

## **ARTICLE 12 LEAVE OF ABSENCE**

- 12.1 An employee may apply for a leave of absence from the Employer through the Mayor's office. Leave of absence will be granted at the sole discretion of the Mayor.
- 12.2 **Military Leave** — The employees will return to employment without loss of seniority, except temporary employees, in compliance with the Universal Military Training and Service Act, who have entered the armed forces of the United States and have satisfactorily completed their period of training and service under the various regulations governing said service and:
- (A) are honorably discharged from such services; and
- (B) are still qualified to perform duties of their respective positions; and
- (C) subsequent to the date of this agreement, but within ninety days (90) after they are relieved of such service or from hospitalization continuing after discharge for a period of not more than one year, apply to the City of Buckley in writing for reemployment, unless it is mutually agreed to extend the time between their discharge and starting to work for the City of Buckley.
- 12.3 All employees filling vacancies caused by the induction into the services as outlined above will recognize the seniority of those returning from service and accept such changes in jobs as are necessary as a result of such reinstatement of employees returning from such service.
- 12.4 Employees of the City of Buckley who are members of the Washington National Guard or of the Army, Navy, Air Force, Coast Guard, or Marine Corps Reserve of the United States, shall be entitled to and shall be granted military leave of absence from employment for such a period not exceeding fifteen (15) days during each calendar year. Such leave shall be granted in order that the person may take part in active training duty in such manner and at such time as he/she may be ordered to active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the employee shall receive from the City of Buckley his/her normal pay. Should

state or federal law change during the life of this Agreement, the Employer shall comply such changes.

### **ARTICLE 13 JURY DUTY**

- 13.1 Employees who are called for service on a Superior Court or Federal District jury, or who are subpoenaed as a witness for court, shall be excused from work for the days on which they serve and shall be paid their regular wage amount for such excused time; provided that the employee shall reimburse the City the amount of fees received from such excused duty immediately upon receipt of said fees, exclusive of travel allowance. An employee called for jury duty who is temporarily excused from attendance at Court must report to his/her place of work at least one-half of his/her normal work day. In order to be eligible for payment of regular wages under this section, the employee must furnish a written statement from the appropriate public official showing the date and time served and the amount of jury duty pay received. Should state or federal law change during the life of this Agreement, the Employer shall comply such changes.

### **ARTICLE 14 GROUP MEDICAL AND DENTAL COVERAGE**

- 14.1 Effective January 1, 2012 the Employer shall pay the cost of premiums, less those employee contribution amounts listed in Section 14.1.1, to maintain the Association of Washington Cities Employee Benefit Trust, "Health First" Plan (hereafter "AWC HFP") for the employee, spouse and dependents.

- 14.1.1 Beginning July 1, 2012 employees shall begin contributing 11.4% of the cost of the City's sponsored healthcare coverage premiums for the employee and eligible dependents (i.e. spouses or children) through payroll withdrawal to maintain current levels of healthcare coverage. All insurance premiums will be subject to applicable payroll taxes as required by the Internal Revenue Service.

The City will not provide duplication of health care coverage to an employee who is married to another employee of the City. One spouse may be named as the policy holder and the other as a covered spouse; OR each may be a policy holder, but in that case neither may be listed as a covered spouse. Their children may be listed as covered dependents on one policy or the other, but not on both.

- 14.2 It is agreed that the following employees are not subject to participation or coverage in any group insurance plan, including dental: temporary, casual, on call, seasonal employees working less than seven (7) months, and senior aides.

- 14.3 **Wellness Program Participation Incentive** - Beginning January 1, 2012 employees voluntarily participating in the City's Wellness Program, as defined in section 19.6.1 below, shall be eligible to receive an annual Wellness Incentive bonus of one percent (1.0%) of the total annual premium amount paid on behalf of the employee and/or employees enrolled dependents to the employee in a lump sum in December of each year.

- 14.3.1 **Wellness Program Participation** - Participation for purposes of determining eligibility for incentives is defined as completing all of the following on an annual basis;

(a) Complete an annual health screening that may include;

- Blood Pressure Screening
- BMI / Body Composition Screenings
- Hearing Screening
- Vision Testing

- Cholesterol Screening / Lipid Profile Screenings
- Glucose Tests
- Bone Density Tests
- Onsite Mammograms
- Immunizations and Flu Shots

- (b) Complete an annual dental check-up at a licensed service provider; and
- (c) Annually participate in a minimum of two City sponsored Wellness events; and
- (d) Complete and record 90 minutes of eligible Wellness Activities every week and submit form to the City's Wellness Coordinator on a monthly basis.

14.3.2 **Voluntary Participation** - Participation in the Wellness Program is strictly voluntary.

**ARTICLE 15 DISCRIMINATION**

- 15.1 The Employer and the Union agree that there shall be no unlawful discrimination against any employee because of race, creed, color, sex, age, sexual orientation, marital status, national origin or disability.
- 15.2 The Employer shall have the right to determine the competency and qualifications of its employees and the right to discharge any employee for just and sufficient cause; provided, however, no employee shall be discriminated against or jeopardized in seniority standing, or suffer any loss of employment on account of membership or lawful activity in the Union as observer or shop steward, so long as such activities are not carried on during working hours so as to interfere with the Employer's work.
- 15.3 There shall be no union meetings held during working hours without prior approval.

**ARTICLE 16 ENTIRE AGREEMENT**

16.1 ~~The Agreement expressed herein and in Appendices A, B and C constitutes the entire agreement between the parties. All matters not specifically covered in the Agreement and attached Appendices A and B shall be deemed to have been raised and disposed of as if specifically covered herein. It is agreed that this document and attached Appendices A and B contains a full and complete Agreement on all bargainable issues between the parties hereto and for all whose benefit this Agreement is made, and no party shall be required during the term of this Agreement to negotiate or bargain upon any issue except as otherwise specified herein. While those Letters of Intent executed concurrent with this Agreement are not specifically part of this Agreement, they represent a continuing intent of the Employer to abide with their terms during this Agreement. The parties agree that no changes in wages, hours, or working conditions shall be made without negotiating such changes as required by law. Past practices shall not prevail. The Employer agrees not to enter into any agreement or contract with employees, individually or collectively, which is inconsistent with the terms of a collective bargaining agreement then in effect.~~

**ARTICLE 17 INSPECTION PRIVILEGES**

17.1 Authorized agents of the bargaining unit shall have access to the Employer's establishment during reasonable working hours for the purpose of adjusting disputes, investigating working conditions and ascertaining that the Agreement is being adhered to; provided, however, that there is no interruption of the Employer's work schedule.

**ARTICLE 18 PAYROLL DEDUCTION FOR DUES AND CREDIT UNION**

18.1 ~~Upon written authorization of an employee, the Employer shall deduct from the pay of such employee the monthly dues and initiation fee uniformly levied against all union members as certified by the secretary or the business representative of the Union.~~

Upon receipt of written authorization individually signed by an employee, the Employer shall have deducted from the pay of such employee the amount of dues, initiation fees, and other such deductions as the employee authorizes as certified by the Union and shall transmit the amount to the Union.

18.2 Upon issuance and transmission of such dues and initiation fees to the Union, the Employer's responsibility shall cease with respect to such deductions. The Union and each employee authorizing the assignment of wages for payment of Union dues hereby undertake to indemnify and hold the Employer harmless from all claims, demands, suits or other forms of liability that may arise against the Employer for or on account of any deduction made from the wages of such employee.

18.3 Upon written authorization of an employee, the Employer shall deduct from the pay of such employee for remittance to the employee's credit union. Only one change per year may be requested by the employee for credit union deduction.

#### **ARTICLE 19 LABOR MANAGEMENT COMMITTEE**

19.1 **Labor Management** — The Employer and the Union agree that a need exists for closer cooperation between labor and management, and further, from time to time suggestions and complaints of a general nature affecting the Union and the Employer require consideration. To accomplish this objective, the Employer and the Union agree that no more than three (3) duly authorized representatives of the Union shall function as one-half (½) of a Labor Management Committee, the other half being no more than three (3) certain representatives of the Employer named for that purpose. The committee shall meet periodically for the purpose of discussing and facilitating the resolution of all problems, which may arise between the parties.

19.2 Should the Union and Employer mutually agree to change, add, or delete any provision of this agreement, such change shall be set forth in an Appendix to the Agreement.

#### **ARTICLE 20 SAVINGS CLAUSE**

20.1 If any article of this section of this Agreement shall be held invalid by law or by any tribunal of competent jurisdiction, the remainder of this Agreement shall not be affected and shall remain in full force and effect. Such invalidated articles or sections shall be negotiated as soon as possible.

#### **ARTICLE 21 WAGES**

21.1 Wage rates are contained in Appendix A and Appendix B of this Agreement.

#### **ARTICLE 22 MANAGEMENT RIGHTS**

22.1 Subject to provisions of this agreement, the Union recognizes the prerogatives of the Employer within the terms of this contract to operate and manage its affairs in all respects and in accordance with its responsibilities and powers and that the employer reserves those rights concerned with the management and operation of the City Hall Administration, and the Street, Water, Sewer, Stormwater Cemetery and Gas and Police Administrative Sections Departments, which includes, but is not limited to the following:

- 22.1.1 To recruit, assign, schedule, transfer and promote members to positions.
- 22.1.2 To suspend, demote, discharge or take disciplinary actions against members for just and sufficient cause.
- 22.1.3 To determine methods, means and personnel necessary for efficient and productive operations.
- 22.1.4 To control the Department budget.
- 22.1.5 To take whatever actions are necessary in emergencies in order to assure the proper functions of the Employer.

## **ARTICLE 23 UNION RIGHTS**

- 23.1 It is agreed that the Union retains all lawful rights except as those rights are limited by the express and specific language of this written agreement. Nothing anywhere in this agreement shall be construed to impair the right of the Union to conduct its affairs in all lawful particulars except as expressly and specifically modified by the express and specific language of this written agreement. It is further agreed that nothing contained in this agreement shall be construed as limiting the Union's right to control its internal affairs and discipline its members who have violated the terms of this agreement.
- 23.2 The City will recognize one shop steward to represent the bargaining unit employees in the Public Works Department and one shop steward to represent the clerical bargaining unit employees in the Administrative/Clerical Departments. The Union agrees to notify the City of the duly accredited representative of the Union immediately upon their election or appointment. The Shop Steward shall be granted leave from duty with pay for negotiation sessions with Employers management that occur during the steward's regular work shift. For meetings that take place at a time that the steward is not scheduled to be on duty, the time shall be non-compensatory.

## **ARTICLE 24 PERFORMANCE OF DUTY**

- 24.1 Nothing in this Agreement shall be construed to give an employee the right to strike and no employee shall strike or participate in any work stoppage. No lockouts shall be instituted by the employer.

## **ARTICLE 25 PART-TIME EMPLOYEES' BENEFITS**

- 25.1 Should the Employer create a regular part-time position encompassed in the bargaining unit, the Employer and the Union shall meet to negotiate wage and benefit levels for such position.

## **ARTICLE 26 LENGTH OF AGREEMENT**

- 26.1 This Agreement shall become effective January 1, 2014 2016, and shall remain in effect through December 31, 2015 2017. At least sixty (60) days, but not more than ninety (90) days prior to the termination date, the Union shall request that negotiations be opened for a successor contract and a mutually acceptable meeting date shall be set not more than fifteen (15) days following such requests. ~~All proposals for negotiations shall be presented in writing by the second negotiation meeting and only such proposals shall be considered unless otherwise mutually agreed.~~
- 26.2 Re-Opener. In the event that the increase in employee's average share of the healthcare coverage premium is greater than the average general wage increase scheduled for January 1, 2017, this Agreement shall be re-opened for negotiations upon the City's receipt of the Union's written request to do so. The increase in the

employee's share of healthcare coverage premium shall be measured by comparing the average of all bargaining unit employee's share of healthcare coverage premiums for 2016 to 2017. The increase in the general wage will be measured by comparing the average base wage rate of the bargaining unit for 2016 to 2017.

**ARTICLE 27 DRUG TESTING**

27.1 All covered employees who possess or who are required to possess a CDL driver's license ~~and/or are certified at any level to work on the Natural Gas System~~ shall be required to participate and comply with Federal, State and City drug and alcohol testing.

27.2 ~~This agreement hereby incorporates by reference the Letter of Agreement between the City of Buckley and the International Union of Operating Engineers Local 286 regarding Sewer Treatment Plant hours.~~

**ARTICLE 28 CENTRAL PENSION FUND (CPF)**

28.1 Effective February 1, 2006, the wages of each member of the bargaining unit under all classifications except, the Administrative/Utility Clerk(s) positions, will be reduced by fifty cents (\$0.50) per compensable hour to be remitted to the Central Pension Fund. Annually thereafter, bargaining unit employees will review the most recent contribution level and vote to determine whether the amount shall remain the same or be increased in the upcoming year. Any change in deferral amount shall be reported to the City Finance Director no later than December 1 of the year preceding the change.

28.2 Effective June 1, 2003, and during the continuance of this collective bargaining agreement, from the funds derived through the implementation of paragraph one (1) above, the Employer shall pay into the Central Pension Fund of the International Union of Operating Engineers and Participating Employers, on the account of each member of the International Union of Operating Engineers, Local No. 286 Bargaining Unit member participating, an hourly sum for every hour for which compensation was paid. The purpose of said payments shall be to provide a supplemental retirement benefit for eligible employees pursuant to the provisions of said Central Pension Fund. The funding for this payment, the stipulated amount of any said sum, and the designated effective date for payment of any said sum are defined and set forth in paragraph one (1) above.

28.3 Obligation to the Fund: The Employer and the Union agree to be bound by the respective Agreement and Declaration of Trust entered into on the date set forth herein for the Fund, namely, as of September 7, 1960, establishing the Central Pension Fund of the International Union of Operating Engineers and Participating Employers, and by any amendments to said Trust Agreement, heretofore and hereafter adopted.

Dated this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, ~~2014~~ 2016.

CITY OF BUCKLEY

INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL NO. 286

By: \_\_\_\_\_  
Pat Johnson, Mayor

By: \_\_\_\_\_  
Richard Spenser, Business Manager

By: \_\_\_\_\_  
Dave Schmidt, City Administrator

By: \_\_\_\_\_  
~~James Burnson~~, Business Representative

APPENDIX A  
to the  
A G R E E M E N T  
By and Between  
CITY OF BUCKLEY  
and  
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 286

January 1, 2014 2016 through December 31, 2015 2017

THIS APPENDIX IS SUPPLEMENTAL to the Agreement by and between the City of Buckley (hereinafter referred to as the “Employer”) and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 286 (hereinafter referred to as the “Union”).

A.1 Effective January 1, 2014 2016, the monthly rates of pay for employees covered by this Agreement shall be as listed below, except for the employees hired into the Utility Apprentice Program, which is specified in Appendix B of this Agreement. Table A.1 reflects the monthly rates of pay from January 1, 2014 2016 through December 31, 2014 2016 of 2.0%. Table A.1.1 reflects the monthly rates of pay from January 1, 2015 through December 31, 2015 of 3.0%. Section A.1.1 reflects the monthly rates of pay from January 1, 2017 to December 31, 2017.

**TABLE A.1**

<b>Public Works &amp; Clerical Department Employee Salaries (2.5%)</b>						
<b>(January 1, 2014 to December 31, 2014)</b>						
<b>Classification</b>	<b>0-6 mos</b>	<b>7-12 mos</b>	<b>13-24 mos</b>	<b>25-36 mos</b>	<b>37-48 mos</b>	<b>49+ mos</b>
Cemetery Caretaker	\$3,517	\$3,621	\$3,730	\$3,843	\$3,959	\$4,076
Maint Parks/Bldg Custodial	\$2,315	\$2,385	\$2,456	\$2,530	\$2,606	\$2,684
Admin Assistant	\$2,746	\$2,829	\$2,913	\$3,001	\$3,091	\$3,184
Police Records Clerk	\$3,200	\$3,296	\$3,395	\$3,497	\$3,602	\$3,710
Support Services Officer	\$3,331	\$3,465	\$3,603	\$3,747	\$3,897	\$4,053
Maint Parks/Bldg	\$3,517	\$3,621	\$3,730	\$3,843	\$3,959	\$4,076
Utility Billing/Deputy Clerk	\$3,676	\$3,786	\$3,900	\$4,016	\$4,138	\$4,261
Permit/Land Use Tech/PW Clerk	\$3,741	\$4,008	\$4,168	\$4,335	\$4,509	\$4,689
Utility Worker	\$4,171	\$4,296	\$4,424	\$4,557	\$4,695	\$4,835
Utility Worker Lead	\$4,554	\$4,691	\$4,833	\$4,977	\$5,126	\$5,281
WWTP Supervisor	\$4,973	\$5,123	\$5,277	\$5,435	\$5,599	\$5,766
PWD Supervisor	\$5,236	\$5,393	\$5,554	\$5,722	\$5,893	\$6,069

<b>Public Works &amp; Clerical Department Employee Salaries (2.0%)</b>						
<b>(January 1, 2016 to December 31, 2016)</b>						
<b>Classification</b>	<b>0-6 mos</b>	<b>7-12 mos</b>	<b>13-24 mos</b>	<b>25-36 mos</b>	<b>37-48 mos</b>	<b>49+ mos</b>
Cemetery Caretaker	\$3,694	\$3,805	\$3,919	\$4,037	\$4,159	\$4,283
Maint Parks/Bldg Custodial	\$2,433	\$2,506	\$2,581	\$2,658	\$2,738	\$2,820
Admin Assistant	\$2,885	\$2,972	\$3,060	\$3,153	\$3,248	\$3,345
Police Records Clerk	\$3,362	\$3,463	\$3,567	\$3,674	\$3,784	\$3,897
Support Services Officer	\$3,500	\$3,639	\$3,785	\$3,937	\$4,094	\$4,259
Maint Parks/Bldg	\$3,694	\$3,805	\$3,919	\$4,037	\$4,159	\$4,283

Utility Billing/Deputy Clerk	\$3,862	\$3,978	\$4,097	\$4,219	\$4,347	\$4,477
Permit Tech/PW Clerk	\$3,930	\$4,211	\$4,380	\$4,554	\$4,737	\$4,927
Utility Worker	\$4,382	\$4,514	\$4,648	\$4,788	\$4,932	\$5,080
Utility Worker Lead	\$4,785	\$4,929	\$5,078	\$5,230	\$5,386	\$5,548
Asst PWD Supervisor	\$5,000	\$5,151	\$5,306	\$5,464	\$5,627	\$5,798
WWTP Supervisor	\$5,224	\$5,383	\$5,544	\$5,710	\$5,882	\$6,058
PWD Supervisor	\$5,501	\$5,665	\$5,835	\$6,011	\$6,191	\$6,376

**\*Note:** The administrative assistant position is a permanent, part time position that is scheduled at less than 40 hours per week. The monthly rate of pay for this position listed in Table A.1 is for a fulltime 40 hour position. The actual compensation for the position will be based on a level of salary that is proportionate to the actual hours worked. Three quarter time would correlate to a salary that is 75% of the listed salary.

A.1.1 Effective January 1, 2017, the monthly rates of pay for employees covered by this Agreement shall be increased first by one quarter of one percent (.25%) and then additionally by one hundred percent (100%) of the percentage increase in the Consumer Price Index for Seattle, Tacoma, Bremerton with a minimum increase of not less than one percent (1%) and a maximum increase of no more than five percent (5%). The index used shall be the Seattle, Tacoma, Bremerton CPI-U covering the period from October 2015 to October 2016.

**TABLE A.1.1 (2015)**

<b>Public Works &amp; Clerical Department Employee Salaries (3.0%)</b>						
<b>(January 1, 2015 to December 31, 2015)</b>						
<b>Classification</b>	<b>-0-6 mos</b>	<b>-7-12 mos</b>	<b>-13-24 mos</b>	<b>-25-36 mos</b>	<b>-37-48 mos</b>	<b>-49+ mos</b>
Cemetery Caretaker	\$3,622	\$3,730	\$3,842	\$3,958	\$4,077	\$4,199
Maint Parks/Bldg Custodial	\$2,385	\$2,457	\$2,530	\$2,606	\$2,684	\$2,765
Admin Assistant	\$2,828	\$2,914	\$3,000	\$3,091	\$3,184	\$3,279
Support Services Officer	\$3,431	\$3,568	\$3,711	\$3,860	\$4,014	\$4,175
Police Records Clerk	\$3,296	\$3,395	\$3,497	\$3,602	\$3,710	\$3,821
Maint Parks/Bldg	\$3,622	\$3,730	\$3,842	\$3,958	\$4,077	\$4,199
Utility Billing/Deputy Clerk	\$3,786	\$3,900	\$4,017	\$4,136	\$4,262	\$4,389
Permit Tech/PW Clerk	\$3,853	\$4,128	\$4,294	\$4,465	\$4,644	\$4,830
Utility Worker	\$4,296	\$4,425	\$4,557	\$4,694	\$4,835	\$4,980
Utility Worker Lead	\$4,691	\$4,832	\$4,978	\$5,127	\$5,280	\$5,439
WWTP Supervisor	\$5,122	\$5,277	\$5,435	\$5,598	\$5,767	\$5,939
PWD Supervisor	\$5,393	\$5,554	\$5,721	\$5,893	\$6,070	\$6,251

A.2 Progression through the Table shall be in accordance with the number of months in each step. Step advancement shall be automatic, based on satisfactory performance.

A.2.1 **Longevity** – Beginning January 1, 2009 longevity pay shall be added to each employee’s base monthly pay according to the following schedule:

**Table A.2.1**

<b>Years continued employment</b>	
-----------------------------------	--

	Longevity pay in addition to normal monthly base pay
10 – 14 years	\$65.00 \$50.00 per month
15 – 19 years	\$92.00 \$75.00 per month
20 – 24 years	\$120.00 \$100.00 per month
25 – 29 years	\$150.00 \$125.00 per month
30 years and above	\$165.00 \$150.00 per month

Longevity pay for each employment interval shall begin on the anniversary date that the employee enters into the specific longevity category. Example: An employee begins to receive longevity pay of \$50 65.00 per month in the 10-14 year category on the first day of entering their 10th year of service to the City.

A.3 The regular straight time hourly rate of pay for full-time employees shall be determined by dividing the monthly rate of pay by 173.3 hours.

A.4 When an employee is advanced to a higher job classification, the employee shall be placed in a Step in the higher classification which is greater than their current rate of pay.

A.5 **Certification Pay** - In addition to the monthly wages set forth above, employees shall receive one percent (1%) of their base monthly rates of pay for achieving and maintaining a certification in the following categories:

- Water Distribution Manager II or higher
- Wastewater Pollution Control Operator II or higher
- Wastewater Collection Specialist II or higher
- Mechanic’s Certification (obtained by achieving two (2) minor certifications in automotive related subjects)
- Office High Tech Equipment Operator (obtained by achieving two (2) minor certifications in computer system/operation related subjects)
- ~~Gas System Operator Certification I (includes pipe fusion)~~
- ~~Gas System Operator Certification II (includes arc or oxy weld)~~
- ~~Gas System Operator Certification III (includes arc and oxy weld)~~
- Wastewater Group II or higher
- Basic Treatment Plant Operator (BTO) or higher
- Public Pesticide Applicator Certification
- Land Use Permit Technician Certification
- Certified Municipal Clerk
- Water System Cross Connection Control Specialist
- Backflow Assembly Tester
- Sedimentation and Erosion Control Certification
- Washington State Class A CDL any endorsement
- Passport Agent Certification
- Others per A.5.2

Additional Testing – As designated by the City a Wastewater Treatment Plant Operator shall be selected from assigned certified personnel and paid an additional stipend for testing performed for Wilkeson and Carbonado.

A.5.1 Certification pay shall become effective the month the certification issued and shall be approved by the Employer. The maximum certification pay an employee may receive is five percent (5.0%) of their base monthly rates of pay.

A.5.2 In order for an employee to be eligible for certification pay the employee shall be required to maintain the eligible certification at all times. Eligible certifications shall include those that are directly related to the employees position classification and expanded to include others not listed jointly agreed upon by the Union and the City.

A.6 **Cost to Maintain Skills:** The City will pay employees for the education or training necessary to maintain licenses or certifications required by the job classification. The education or training must be approved in advance by the City and scheduling may be limited by the availability of classes and the needs of the City. City vehicles will be made available so travel costs will not be reimbursable. Attendance will be considered as part of the work day. The City may modify the employee's schedule to include education and training without incurring employee overtime.

APPENDIX B  
to the  
A G R E E M E N T  
By and Between  
CITY OF BUCKLEY  
and  
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 286

January 1, 2016 through December 31, 2017

---

THIS APPENDIX IS SUPPLEMENTAL to the Agreement by and between the City of Buckley (hereinafter referred to as the “Employer”) and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 286 (hereinafter referred to as the “Union”).

- B.1 The Employer and Union agree to recognize the Utility Maintenance Apprentice position as a full-time, 36 month training position, which is subject all the provisions of the collective bargaining unit agreement, except for pay and probation, which is specified in sections below along with salary provisions, qualifications and training descriptions.
- B.2 The Employer pursuant to Article 22 shall determine which position classification employee(s) selected for this program will be assigned. The Union recognizes that as a utility apprentice position the Employer may establish and use this individual for duties outside of the assigned position classification.
- B.3 **Probationary Period** - The probationary period shall be thirty-six (36) months from the date of employment, during which time the apprentice must successfully complete all of the certification/training requirements specified below in Table B.I. If the employee successfully completes the training program within 36 months as described below, he/she will be certified as a journeyman utility maintenance worker and promoted to that position classification and pay scale as identified in this contract. If the employee successfully completes the certification/training program in less than 36 months the City at its discretion may promote the employee to the next higher position classification at the time of completion.
- B.4 **Probationary Extension** - Employees shall be required to complete the training/certification requirements as specified under the program requirements identified in B.7 or be subject to termination as indicated in B.6. The PW Superintendent with the concurrence of the City Administrator may adjust and/or extend intervals of completion for training/certification based upon extenuating circumstances, performance and/or need up to an additional 6 months per level, but in no case will an extension be approved past the full program period of 36 months.
- B.5 **Program Completion** – program completion will be achieved when the employee has successfully completed all of the certification/training requirements for the position classification assigned. Upon satisfactory completion of the program the employee will be promoted to journey level maintenance worker status and shall receive all of the pay, benefits, privileges and protections that other employees within this position classification are receiving.
- B.6 **Termination**- Employees participating in this 36 month training program are to be considered as probationary at-will employees and can be terminated at any time subject to the City of Buckley Personnel Procedures and

B.7 **Apprentice Training Program Description** - The City of Buckley utility maintenance apprentice position will be a permanent 40-hour per week entry-level position, designated to a position classification depending upon City posting and need. The utility maintenance apprentice will be expected to perform duties as described in the job description and be able to successfully complete the following training/certification tasks based on the position classification assigned:

**TABLE B.I**

Class Specification	Description of Training			
<b>Natural Gas System Certification/Training</b>				
<b>PW Gas System</b>	Individual assigned to this position classification shall within 36 months successfully complete all the training/certification levels and/or tasks listed to the right. Individual training items or tasks shall be obtained in the time specified.  *Note: As required by the City	<b>CERT/TRNG</b>	<b>Time Interval</b>	<b>Advance to Step</b>
		CPR/First Aid/Flaggers Certification	3 months	Step B
		Washington State Class B CDL License	6 months	Step C
		Plastic Gas Pipe Fusion Certification		
		Are Welders Certificate for Gas Piping: or Acetylene Welders Certificate for Gas Piping*	24 months	Step D
		City of Buckley Gas System Operator II Certification	36 months	Journey Level Maintenance Worker
<b>Water System Certification/Training</b>				
<b>PW Water System</b>	Individual assigned to this position classification shall within 36 months successfully complete all the training/certification levels and/or tasks listed to the right. Individual training items or tasks shall be obtained in the time specified.  *Note: As required by the City	<b>CERT/TRNG</b>	<b>Time Interval</b>	<b>Advance to Step</b>
		CPR/First Aid/Flaggers Certification	3 months	Step B
		Washington State Class B CDL License	6 months	Step C
		Washington State Water Distribution Manager Operator-in-Training (OIT)		

		Washington State Water Distribution Manager I (WDM I) Certification	24 months	Step D
		Washington State Water Treatment Plant Operator (WPTO) Certification; or Cross Connection Control Specialist Certification*	36 months	Journey Level Maintenance Worker
<b>Wastewater Treatment Certification/Training</b>				
<b>PW Wastewater Treatment</b>	Individual assigned to this position classification shall within 36 months successfully complete all the training/certification levels and/or tasks listed to the right. Individual training items or tasks shall be obtained in the time specified.	<b>CERT/TRNG</b>	<b>Time Interval</b>	<b>Advance to Step</b>
		CPR/First Aid/Flaggers Certification	3 months	Step B
		Washington State Class B CDL License	6 months	Step C
		Washington State Wastewater Treatment Operator-in-Training (OIT)		
		Washington State Group I Wastewater Treatment Certification	24 months	Step D
		Washington State Group II Wastewater Treatment Certification	36 months	Journey Level Maintenance Worker

B.8 **Supervision of Apprentices:** Employees hired or transferred to a utility apprentice position shall be required to perform the duties of the position classification as specified in section B.7, but shall not be permitted to perform work within the position classification that requires special training and/or a particular certification level unless supervised by an employee that has met the training/certification requirement of the related rule or regulation in place concerning such activity. Pertinent regulations governing work within the position classifications are;

~~PW Gas System – Title 49 CFR, Part 192, subpart N, Sections 192.805(b)~~

**PW Water System – WAC 246-292**

**PW Wastewater Treatment – WAC 173-230**

- B.9 **Salary:** Monthly Rates of Pay Table B.II reflects the monthly rates of pay from January 1, 2016 to December 31, 2016 of 2.0%. Employees hired to the utility apprentice program will be eligible to advance to the step level indicated upon successful completion of the certification/training of each level as illustrated in Table B.I above.

**TABLE B.II**

<b>Public Works &amp; Clerical Department Employee Salaries (2.0%)</b>				
<b>(January 1, 2016 to December 31, 2016)</b>				
	<b>Step A</b>	<b>Step B</b>	<b>Step C</b>	<b>Step D</b>
Utility Maint Apprentice	\$3,660	\$3,770	\$3,882	\$3,999

- B.9.1 Monthly Rates of Pay Table B.III reflects the monthly rates of pay from January 1, 2015 to December 31, 2015 of 3.0%.

Effective January 1, 2017, the monthly rates of pay for employees covered by this Agreement shall be increased first by one quarter of one percent (.25%) and then additionally by one hundred percent (100%) of the percentage increase in the Consumer Price Index for Seattle, Tacoma, Bremerton with a minimum increase of not less than one percent (1%) and a maximum increase of no more than five percent (5%). The index used shall be the Seattle, Tacoma, Bremerton CPI-U covering the period from October 2015 to October 2016

**TABLE B.III**

<b>Public Works &amp; Clerical Department Employee Salaries (3.0%)</b>				
<b>(January 1, 2015 to December 31, 2015)</b>				
	<b>Step A</b>	<b>Step B</b>	<b>Step C</b>	<b>Step D</b>
Utility Maint Apprentice	\$3,695	\$3,807	\$3,920	\$4,038

- B.10 **Cost of Certification:** The City will pay for the education or training necessary for the apprentice to acquire the licenses and certification required by the job classification. The education or training must be approved in advance by the City and scheduling may be limited by the availability of classes and the needs of the City. City vehicles will be made available to travel costs will not be reimbursable. Attendance will be considered as part of the work day. The City may modify the employee's schedule to include education and training without incurring employee overtime.



**MEMORANDUM OF UNDERSTANDING**  
**CITY USE OF CONTRACT SERVICE FOR**  
**CEMETERY MAINTENANCE & OPERATIONS**

This agreement is entered into by and between the CITY OF BUCKLEY ("Employer"), and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286 ("Union"). It is to remain separate and apart from the provisions in the existing labor agreement.

**Whereas**, changes in societal behavior have led to major shortfalls in revenue to the City Cemetery operations. By utilizing 2008 as a base year, revenues in the Cemetery have fallen by 15% in 2011, 34% in 2012, 14% in 2013, 37% in 2014 and 41.65% in 2015; and

**Whereas**, in July, 2010 the City and the Local 206 entered into a MOU memorializing terms and conditions surrounding reducing the Parks & Building Maintenance position to a ½ funded position due to financial constraints; and

**Whereas**, due to the generational and societal shift in the public's behavior concerning funeral and burial options, and the pattern of falling revenues, the City does not believe that funding a position at the Cemetery at even a ½ time position is sustainable; and

**Whereas**, due to these circumstances the City has requested that the Union consider agreeing to terms and conditions that would allow the City to seek alternate means maintain and operate the City Cemetery to include potentially contracting for services; and

**Whereas**, in exchange for this consideration and agreement the City will reinstate the Parks & Building Maintenance position at full-time through the use of reserves and add a new full-time Utility Systems Technician position to the bargaining unit and City's workforce;

Therefore the parties agree as follows;

1. The City and Union agree that effective January 1, 2016, the City will reinstate and fill the Building & Parks Maintenance position at a full time 40 hour/week level; and
2. The City and Union agree that effective January 1, 2016, the City will jointly develop a position description and fill a new Utility Systems Technician position at a full time 40 hour/week level; and

3. The City and Union agree that the Cemetery Caretaker is removed and excluded from the bargaining unit and the City may seek alternate means for the care, maintenance and operation of the Buckley City Cemetery to include contracting for services.
4. This Memorandum of Understanding shall become effective January 1, 2016.
5. Underlying Agreement. The underlying agreement between the parties remains in full force and effect. Nothing herein shall be interpreted to deprive the city of its management prerogatives to determine the nature of its services, budget and layoff employees due to lack of work or funding. The parties specifically reserve their respective rights to collectively bargain now and in the future with respect to the positions referenced herein. This is the entire agreement between the parties on the positions referenced above and all prior understandings, written or oral are merged with its provisions.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

CITY OF BUCKLEY

INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
LOCAL NO. 286

By: \_\_\_\_\_  
Pat Johnson, Mayor

By: \_\_\_\_\_  
David Maxwell, Business Manager

By: \_\_\_\_\_  
Dave Schmidt, City Administrator

By: \_\_\_\_\_  
Jeff Frazier, Business Representative

**City Council  
January 12, 2015**

**Mayor Johnson administered the Oath of Office to Council members Leggett, Tremblay and Burkett prior to the start of the City Council Meeting.**

Mayor Johnson called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Sundstrom, Rose, Tremblay, Leggett, Kyllonen, Burkett and Boyle Barrett. Also in attendance were City Administrator Schmidt, Police Chief Arsanto, Assistant Police Chief Northam, Detective Garrett, Fire Chief Predmore, Assistant Fire Chief Skogen, City Clerk Starr and City Planner Thompson.

Mayor Johnson asked if there were any changes, additions or deletions to the agenda. City Administrator Schmidt stated that he would like to remove the first item on the agenda and place it on the January 26<sup>th</sup> agenda. **Council member Tremblay moved to approve the amended agenda. Council member Rose seconded the motion. Motion carried.**

**STAFF REPORTS**

City Clerk Starr stated that she would like to request that all Council members start bringing and using their lap tops. Shane Frazier our IT specialist is willing to assist anyone who may need additional help. Also, City Clerk Starr has provided the new Council members Kyllonen and Burkett a packet of information they may need, as well as information about the Open Government Training that is required for all Council members.

City Planner Thompson stated that the Planning Commission has been very busy and there will be three Ordinances coming to the Council for approval at the next meeting.

**MAIN AGENDA**

**ORD No. 01-16: Amending City Zoning Map – Rezone 103 Parcels:**

**Council member Tremblay moved to approve ORD 01-16 Amending the City's Zoning Map - Rezone of 103 Parcels. Council member Leggett seconded the motion. Upon roll call vote motion carried 6/1.**

**Res No. 16-01: Setting a Public Hearing on the 112<sup>th</sup> St E Street Vacation:**

**Council member Rose moved to approve RES No. 16-01 Setting a Date for a Public Hearing on the 112<sup>th</sup> St. E Street Vacation. Council member Boyle Barrett seconded the motion. Motion carried.**

**RES No. 16-02: Converting Portions of PC Tax Parcel #061909-1-028 to Public ROW:**

Council member Boyle Barrett moved to approve RES No. 16-02 Converting and Dedicating Portions of PC Tax Parcel #0619091028 to Public Right-of-Way through Quit Claim Deed. Council member Tremblay seconded the motion. Motion Carried.

**Memorandum of Understanding – Radio User Agreement with King County:**

Council member Boyle Barrett moved to authorize the Mayor to execute the Memorandum of Understanding between the City of Buckley and Valley Communications Center for radio communications interoperability. Council member Tremblay seconded the motion. Motion carried.

**Agreement – SS911 Dispatch Agreement (Fire Dept.):**

Council member Tremblay moved to authorize the Mayor to execute the Fire Dispatch Service Agreement with South Sound 911. Council member Boyle Barrett seconded the motion. Motion carried.

**Agreement – Physio Control (Fire Dept.):**

Council member Boyle Barrett moved to authorize the Mayor to execute the 3-year Technical Service and Support Agreement with Physio Control expiring January 30<sup>th</sup>, 2019. Council member Kyllonen seconded the motion. Motion carried.

**Agreement Amendment No. 4 – Fire Protection Services at Rainier State School:**

Council member Boyle Barrett moved to authorize the Mayor to execute Contract Amendment No. 04 to the Contract Agreement between the City of Buckley and State of Washington Department of Social Services and Health Services for Fire Protection Services at Rainier School. Council member Leggett seconded the motion. Motion carried.

**Agreement – Combined Communications Network System Access (Fire Dept):**

Council member Boyle Barrett moved to approve the proposed Pierce County/Pierce Transit Combined Communications Network System Access Agreement and Authorized the Mayor to execute the Agreement. Council member Rose seconded the motion. Motion failed.

**CONSENT AGENDA**

Council Member Boyle Barrett moved to approve the Consent Agenda as presented. Council member Rose seconded to motion. Motion carried.

Approve Minutes of December 8, 2015 City Council Meeting.

Claim check numbers 53882 through 53941, in the amount of \$225,126.34 for the period of December 9, 2015 through December 22, 2015; Treasurer check numbers 11824 through 11833, in the amount of \$2,076.14 and EFTs in the amount of \$10,853.82 for a total of \$12,929.96 for the month of December, 2015; Payroll check numbers 35271 through 35338 in the amount of \$176,241.66 and EFTs in the amount of \$235,196.76 for a total of \$411,438.42 for the month of December 2015; and Claim check numbers 53942 through 54027, in the amount of \$147,437.45 for the 13<sup>th</sup> Month period of 2015 are hereby approved and ordered paid this 12<sup>th</sup> day of January 2016.

## **COMMITTEE REPORTS**

**Mayor's Report:** Mayor Johnson stated that they need to review the Committee Assignments. Mayor Johnson suggested that all Committees stay the same and have new Council member Kyllonen replace Montgomery's position on the Community Services Committee, and Council member Burkett will replace Howard on the Transportation & Utilities Committee. **Council member Boyle Barrett made a motion to approve the Committee Assignments per Mayor Johnson's recommendation. Council member Rose seconded the motion. Motion carried.**

Mayor Johnson stated that the position of Mayor Pro Tem needs to be assigned as it is the beginning of a new council session, and this is done every other year. **Council member Boyle Barrett nominated Council member Tremblay. Council member Rose seconded the motion. Motion carried.** Congratulations Mayor Pro Tem Tremblay.

Mayor Johnson stated that the AWC Legislative Conference is going to be in Everett this year and if you are interested let Finance Director Bazzar know so she can get you registered.

**Administration, Finance & Public Safety:** Council member Boyle Barrett stated that most topics discussed in the meeting were included on the agenda tonight. Next meeting will be January 19<sup>th</sup> at City Hall.

**Transportation & Utilities:** Council member Tremblay stated that their next meeting will be January 19<sup>th</sup> at City Hall.

**Community Services:** Council member Rose stated that their next meeting will be January 21<sup>st</sup> at City Hall.

### **Council Member Comments & Good of the Order:**

Council member Sundstrom talked about the cost of the homes within the new development and stated he thought the cost of the new homes was a little expensive for our area and would like to see more affordable housing in the future.

**Council member Rose moved to adjourn. Council member Boyle Barrett seconded the motion. Motion carried.**

**With nothing further the meeting was adjourned at 7:50 PM.**

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Mayor

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City Administrator