

ORDINANCE NO. 1558

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, RECODIFYING CHAPTER 14.70 AND AMENDMENT SECTIONS 19.04.070 AND 19.06.070 OF THE BONNEY LAKE MUNICIPAL CODE RELATING TO DEVELOPMENT AGREEMENTS.

WHEREAS, the City is authorized by RCW 36.70B.170 to enter into voluntary development agreements to govern the development of land and the issuance of project permits; and

WHEREAS, the City's current municipal code does not include provisions related to the process, standards, and criteria for entering into development agreements; and

WHEREAS, WAC 365-196-845(17)(a)(i) provides that if the City's development code allows discretion in how the City's development regulations apply, the development agreement can specify how the City will use that discretion; and

WHEREAS, WAC 365-196-845(17)(c)(ii) provides that development agreements may establish the amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications; and

WHEREAS, RCW 82.02.060(2) authorizes the City to provide exemptions from the City's impact fees for development activities with broad public purposes; and

WHEREAS, one of the strategic outcomes identified in *Bonney Lake 2035* – Section 3 is to focus resources that will support the development of the City's four centers contributing to the City's overall character and supporting the regional growth strategy; and

WHEREAS, Policy CD-3.4 of *Bonney Lake 2035* directs the City to, “[E]xplore methods and partnerships to reduce the cost associated with developing housing;” and

WHEREAS, Policy CD-7.8 of *Bonney Lake 2035* directs the City to foster partnerships with the private sector; and

WHEREAS, Policy EV-3.5 of *Bonney Lake 2035* directs the City to, “[P]rovide flexibility in land use plans and development regulations to allow the local business

community to take advantage of new business trends and opportunities that are consistent with the City’s economic development vision;” and

WHEREAS, Policy EV-5.8 of *Bonney Lake 2035* directs the City to, “[F]acilitate economic development in commercial areas through public/private partnerships if the activity is consistent with the city’s adopted policies, if there is a compelling public benefit, and if there is an acceptable level of risk;” and

WHEREAS, On June 15, 2016, the City of Bonney Lake Planning Commission held a public hearing to consider the amendments to the City’s development regulations contained in this Ordinance, as required by BLMC 14.140.080.

WHEREAS, The City complied with all applicable notice, timing and comment provisions in scheduling and carrying out the above-referenced hearing.

WHEREAS, At the above-referenced hearing, the City of Bonney Lake Planning Commission determined that the amendments to the City’s development code contained in this Ordinance are consistent with *Bonney Lake 2035*, other BLMC development regulations, and with the laws of the State of Washington.

WHEREAS, Under the State Environmental Policy Act (SEPA) the adoption of this Ordinance is a non-project action as defined by WAC 197-11-704(2)(b) and Community Development Director acting as the SEPA Responsible Official determined that the proposed amendment is categorically exempt from review under SEPA pursuant to WAC197-11-800(19)(b).

WHEREAS, Pursuant to RCW 36.70A.106(3)(b) the City requested expedited review of this Ordinance from the Department of Commerce. The Department of Commerce review period concluded on June 2, 2016.

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

Section 1. Chapter 14.70 of the Bonney Lake Municipal Code is reenacted and shall be entitled “Development Agreements” to read as follows:

14.70.010 Purpose

Certainty in the development review process can significantly encourage development or redevelopment of real property. This certainty is especially important for large-scale or multiphase developments that take years to complete and that require substantial financial commitments at an early stage. The city may, when appropriate, enhance certainty by entering into a development agreement

with a project sponsor that addresses the “ground rules” for review of the development application and construction of the project. A development agreement provides the opportunity for the city and the developer to agree on the scope and timing of the project, applicable regulations and requirements, mitigation requirements and other matters relating to the development process. A development agreement promotes the general welfare by:

- A. Balancing the public and private interests;
- B. Produce a development which would be as good or better than that resulting from the traditional lot by lot development;
- C. Correlating comprehensively the provisions of State Law, the Development Code, and other ordinances and codes of the City, to permit developments which will provide a desirable and stable environment in harmony with that of the surrounding area;
- D. Encouraging a more creative approach in the development of land that will result in a more efficient, aesthetic, and desirable use of open area, while at the same time maintaining substantially the same population density and area coverage permitted in the zone in which the project is located; and
- E. Permitting flexibility in design, placement of buildings, use of open spaces, circulation facilities, off-street parking areas, and utilizing the potential of sites characterized by special features of geography, topography, size, or shape.

14.70.020 Definitions

- A. “Development Agreement” means an agreement between the city and the owner(s) of real property regarding the development of that property.
- B. “Developer Funded Infrastructure” means the improvement or dedication that meets all of the following criteria:
 - 1. The improvement is identified as public right-of-way or located within the public right-of-way or easement grant to the City;
 - 2. The improvement is limited to public infrastructure such as sidewalks, local streets, and related utilities, and does not include private infrastructure such as side sewer and water service lines; and

3. The cost of the improvement is not already entitled to a credit under the terms of the City's traffic or park impact fee programs under BLMC 19.04.060.C and 19.06.060.C.
- C. "Construction Value" means the value of developer-funded infrastructure determined by adding the fair market value of any land to be dedicated as part of the infrastructure and the estimated costs of design, engineering, and construction of such infrastructure as approved by the director.

14.70.030 Decision criteria.

The city council may approve and enter into a development agreement if the council finds at its sole discretion that the development proposal:

- A. Significantly benefits the City by contributing unique or needed amenities;
- B. Stimulates development in an articulable fashion;
- C. Significantly improves the local economy by adding employment opportunities and contributing to the tax base;
- D. Advances the strategic objectives, goals, and policies of the City's comprehensive plan;
- E. Is consistent with the City's development regulations; except as modified pursuant to BLMC 14.70.060; and
- F. Is in the City's best interests.

14.70.040 Code modifications allowed by development agreement

A development agreement may allow modifications to Title 12 BLMC and the city's Development Code, as provided below:

- A. The traffic impact fees established by Chapter 19.04 BLMC may be credited based on the value of developer funded infrastructure improvements for transportation.
- B. The park impact fees may be credited based on the value of developer funded infrastructure improvements for parks.
- C. In order to encourage innovative land use management and provide flexibility to achieve public benefits, a development agreement adopted pursuant to this

Chapter may impose development standards that differ from the development regulations adopted in the Development Code provided that:

1. Any development standards imposed by the development agreement are consistent with the strategic objectives, goals, and policies comprehensive plan; and
2. The development standards do not:
 - a. Allow for use types or densities currently not permitted within the existing zoning category for the properties subject to the agreement;
 - b. Modify or alter the requirements of the city's building code adopted pursuant to Chapter 15.04 BLMC;
 - c. Modify or alter the requirements of the city's stormwater management regulations adopted pursuant to Chapter 15.13 BLMC; or
 - d. Modify or alter any federally required Americans with Disabilities Act (ADA) standards.

14.70.50 Incentives

- A. A development agreement may reserve capacity in the transportation system for the proposed development's trip generation. The proposed development shall be deemed to have achieved transportation concurrency under the concurrency rules and regulations in effect on the effective date of the development agreement. The term for the concurrency determination shall be set forth in the development agreement.
- B. A development agreement may reserve capacity in the City's sewer system for the proposed development. The amount of capacity reserved shall be set forth in the development agreement.
- C. A development agreement may establish vesting standards subject to the following limitations:
 1. Vesting for regulations adopted pursuant to the State Building Code shall not be altered.
 2. The vesting period cannot be longer than twenty-years from the effective date of the development agreement.

3. If the agreement provides a vesting period that is longer than five (5) years, the agreement shall include milestones for development of the project, which shall be met in order to maintain the extended vesting period.
 4. Negotiated vesting provisions cannot defeat the City's ability to require a developer to comply with latter-adopted state or federal mandates not subject to vesting, or prevent the City from taking action to prevent a public safety, welfare, or health emergency.
- D. Water, sewer, and stormwater system development charges may be credited against the value of developer funded infrastructure for the same utility. Credits shall be calculated in a manner acceptable to both parties. Prior to negotiation of a credit, the City shall obtain an opinion from its financial consultant.

14.70.060 Agreement contents

Development agreements shall include the following:

- A. A site plan depicting boundaries and project elements, such as: location and acreage of active and passive recreational areas, if any; location, acreage and range of densities for residential development, if applicable; location and range of types of uses of nonresidential development; if applicable; location and size of critical areas and buffers, if any; perimeter buffers, if any; and motorized and non-motorized circulation routes, including route connections to streets and pedestrian routes servicing and/or abutting the site;
- B. The development standards and other provisions that shall apply to and govern the use and development of the real property;
- C. Identification of the variations approved under BLMC 14.70.040;
- D. Identification of the capacity reservations approved under BLMC 14.70.050;
- E. The expected build-out period and, if applicable, the phasing of development;
- F. Provisions for the termination of the development agreement;
- G. If environmental review is required under the State Environmental Policy Act, measures to mitigate significant adverse impacts including any impacts to public services and facilities;

- H. A title report indicating proof of ownership; and
- I. Other such other provisions as the parties to the agreement mutually agree to.

14.70.070 Approval procedures.

- A. Development agreements shall be drafted and negotiated by City staff in conjunction with developer representatives.
- B. If necessary to determine the interests of the City Council prior to expending significant time on negotiations, staff may introduce the proposal for Council discussion at a Council Workshop.
- C. Prior to voting on a proposed development agreement, the city council shall hold a public hearing on the proposed agreement.
- D. Notice of the public hearing shall be provided consistent with the requirements of BLMC 14.50.020 and BLMC 14.50.030.
- E. Project-specific development agreements are quasi-judicial land use approvals, to which the Appearance of Fairness doctrine shall apply.

14.70.080 Limitations

- A. The provisions of this Chapter do not apply to or affect the validity of any contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on or before the effective date of this Chapter, or adopted under separate authority, even though such agreements may also relate to development standards, mitigation, and other regulatory requirements.
- B. The City shall not be required, to accept, review or approve a proposed development agreement.
- C. Development agreements shall reserve authority to impose new or different regulations to the extent required by a serious threat to the public health or safety.

14.70.110 Recordation

Within thirty days after approval by the city council, the city shall record the development agreement with the real property records office of Pierce County.

Section 2. Section 19.04.070 “Payment of fees” of the Bonney Lake Municipal Code and the corresponding portion of Ordinance No. 1555 § 2 are hereby amended to read as follows:

19.04.070 Payment of fees.

- A. All developers shall pay an impact fee in accordance with the provisions of this chapter at the time that the applicable building permit is ready for issuance; except:
 - 1. When a ~~commercial or multifamily residential~~ development proposal is subject to a development agreement approved by the city council, said agreement may contain alternate terms and conditions under which the impact fees shall be paid; or
 - 2. When a deferral is granted for a single-family home consistent with the requirements and limitations provided in BLMC 19.04.070.F.
- B. All developers shall pay an impact administrative fee at the time of application for a building permit as set forth in the fee schedule adopted by resolution of the city council.
- C. If the development is modified or conditioned in such a way as to alter the trip generation rate for the development after building permit issuance, the impact fee will be recalculated accordingly.
- D. No building permit shall be issued until the impact fee is paid unless the development is the subject of a development agreement with alternate payment terms or a deferral is granted as provided in 19.04.070.A. If the building permit expires through suspension or abandonment, the impact fee shall be refunded at the request of the applicant as provided in BLMC 19.04.100.A; provided, that if the applicant re-applies for a new permit, the impact fee shall be re-calculated at current rates and the amount of the impact fee already paid and not refunded may be credited toward the new impact fee.
- E. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.
- F. An applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment until final inspection or eighteen (18) months from the date of original building permit issuance, whichever occurs first. Deferral of impact fees are considered under the following conditions:

1. The applicant shall submit to the city a written request to defer the payment of an impact fee prior to issuance of the building permit.
2. To receive a deferral an applicant shall:
 - a. Submit an impact fee deferral application form for each building permit;
 - b. Pay an administrative fee of \$350.00 for each impact fee deferral application:
 - c. Grant and record at the applicant's expense a deferred impact fee lien in a form approved by the City against the property in favor of the City in the amount of the deferred impact fee that:
 - i. Includes the legal description, tax account number, and address of the property;
 - ii. requires payment of the impact fees to the City prior to final inspection or eighteen (18) months from the date of original building permit issuance, whichever occurs first;
 - iii. is signed by all owners of the property, with all signature acknowledged as required for a deed and recorded in Pierce County;
 - iv. binds all successors in title after the recordation; and
 - v. is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.
3. The amount of impact fees deferred shall be determined by the fees in effect at the time the applicant applies for a deferral.
4. The city shall withhold final inspection until the impact fees have been paid in full. Upon receipt of final payment of impact fees deferred under this subsection, the City shall execute a release of deferred impact fee lien for each single-family attached or detached residence for which the impact fees have been received. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her expense.

5. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection.
6. Any application for deferral must be submitted prior to building permit issuance. Any request not so made shall be deemed waived.
7. If impact fees are not paid in accordance with the deferral and in accordance with the term provisions established herein, the City may institute foreclosure proceedings in accordance with Chapter 61.12 RCW.
8. An applicant is entitled to defer impact fees pursuant to this section for no more than 20 single-family attached or detached home building permits per year in the city.
9. For purposes of this section, an “applicant” includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

Section 3. Section 19.06.070 “Payment of fees” of the Bonney Lake Municipal Code and Ordinance No. 1555 § 3 are hereby amended to read as follows:

19.06.070 Payment of fees.

- A. All developers shall pay an impact fee in accordance with the provisions of this chapter at the time that the applicable building permit is ready for issuance; except:
 1. When a development proposal is subject to a development agreement approved by the city council, said agreement may contain alternate terms and conditions under which the impact fees shall be paid; or
 2. ~~When~~ When a deferral is granted for a single-family home consistent with the requirements and limitations provided in BLMC 19.06.070.E.
- B. If the development is modified or conditioned in such a way as to alter the development’s impact on the parks’ level of service after building permit issuance, the impact fee will be recalculated accordingly.
- C. No building permit shall be issued until the impact fee is paid. If the building permit expires through suspension or abandonment, the impact fee shall be refunded at the request of the applicant as provided in BLMC 19.06.090(A); provided, that if the applicant re-applies for a new permit, the impact fee shall

be re-calculated at current rates and the amount of the impact fee already paid and not refunded may be credited toward the new impact fee.

- D. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.
- E. An applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment until final inspection or eighteen (18) months from the date of original building permit issuance, whichever occurs first. Deferral of impact fees are considered under the following conditions:
 - 1. The applicant shall submit to the city a written request to defer the payment of an impact fee prior to issuance of the building permit.
 - 2. To receive a deferral an applicant shall:
 - a. Submit an impact fee deferral application form for each building permit;
 - b. Pay an administrative fee of \$350.00 for each impact fee deferral application;
 - c. Grant and record at the applicant's expense a deferred impact fee lien in a form approved by the City against the property in favor of the City in the amount of the deferred impact fee that:
 - i. Includes the legal description, tax account number, and address of the property;
 - ii. requires payment of the impact fees to the City prior to final inspection or eighteen (18) months from the date of original building permit issuance, whichever occurs first;
 - iii. is signed by all owners of the property, with all signature acknowledged as required for a deed and recorded in Pierce County;
 - iv. binds all successors in title after the recordation; and
 - v. is junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

3. The amount of impact fees deferred shall be determined by the fees in effect at the time the applicant applies for a deferral.
4. The city shall withhold final inspection until the impact fees have been paid in full. Upon receipt of final payment of impact fees deferred under this subsection, the City shall execute a release of deferred impact fee lien for each single-family attached or detached residence for which the impact fees have been received. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her expense.
5. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection.
6. Any application for deferral must be submitted prior to building permit issuance. Any request not so made shall be deemed waived.
7. If impact fees are not paid in accordance with the deferral and in accordance with the term provisions established herein, the City may institute foreclosure proceedings in accordance with Chapter 61.12 RCW.
8. An applicant is entitled to defer impact fees pursuant to this section for no more than 20 single-family attached or detached home building permits per year in the city.
9. For purposes of this section, an “applicant” includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

Section 4. Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force effect.

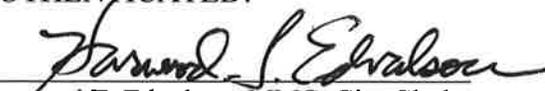
Section 5. Effective Date. This ordinance shall take effect five (5) days after its passage, approval and publication as required by law.

PASSED by the City Council and approved by the Mayor this 8th day of November, 2016.



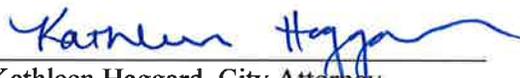
Neil Johnson, Mayor

AUTHENTICATED:



Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:



Kathleen Haggard, City Attorney

Passed: 11/8/2016

AB16-79

Valid: 11/8/2016

Published: 11/16/2016

Effective Date: 11/21/2016

This Ordinance totals 13 page(s)



Memo

Date : June 15, 2016
To : Mayor and City Council
From : Grant Sulham, Planning Commission Chair
Re : **Ordinance D16-79.**

On June 15, 2016, the Planning Commission conducted a Public Hearing on Ordinance D16-79, which adopts a Development Agreement Code establishing a framework under which the City of Bonney Lake would review development agreements. The proposed ordinance establishes minimum criteria that the City would use to evaluate proposed development agreements and provides the City with flexibility to encourage innovation in achieving the City's goals

The Planning Commission concludes that the amendments to the City's development regulations contained in this Ordinance further the following goals and policies of *Bonney Lake 2035*:

- ***Vibrant Centers:*** *The City will focus resources to support the development of four centers that will contribute to the City's overall character and support the regional growth strategy. For many reasons—preservation of open space, reducing vehicle miles traveled and greenhouse gas emissions, supporting retail in the City's core districts—the City will focus its future growth within these centers. (Pg. 1-4)*
- ***Policy CD-3.4:*** *Explore methods and partnerships to reduce the cost associated with developing housing. (Pg. 2-29)*
- ***Policy CD-7.8:*** *Encourage partnerships between the City and the private sector to undertake joint public-private development. (Pg. 2-37)*
- ***Policy EV-3.5:*** *Provide flexibility in land use plans and development regulations to allow the local business community to take advantage of new business trends and opportunities that are consistent with the City's economic development vision. (Pg. 4-16)*

- ***Policy EV-5.8: Facilitate economic development in commercial areas through public/private partnerships if the activity is consistent with the city's adopted policies, if there is a compelling public benefit, and if there is an acceptable level of risk. (Pg. 4-22).***

The Planning Commission voted 5-0-0 to recommend that the City Council approve Ordinance D16-79. As part to the motion, the Planning Commission made two modifications to the ordinance developed by staff, which are reflected in the ordinance presented to the City Council. These modifications are provided below:

1. The lot size of a catalyst project was reduce from four (4) acres to three (3) acres.
2. A requirement to have project milestones was added to the vesting provisions. Milestones are required if a development agreement provides for vesting of more than five years.

As required by BLMC 14.40.100, the Planning Commission adopts the following findings of fact in support of its recommendation:

1. On June 16, 2016, the City of Bonney Lake Planning Commission held a public hearing to consider the amendments to the City's development regulations contained in this Ordinance, as required by BLMC 14.140.080.
2. The City complied with all applicable notice, timing and comment provisions in scheduling and carrying out the above-referenced hearing.
3. At the above-referenced hearing, the City of Bonney Lake Planning Commission determined that the amendments to the City's development code contained in this Ordinance are consistent with other BLMC development regulations and with the laws of the State of Washington.
4. Under the State Environmental Policy Act (SEPA) the adoption of this Ordinance is a non-project action as defined by WAC 197-11-704(2)(b) and Community Development Director acting as the SEPA Responsible Official determined that the proposed amendment is categorically exempt from review under SEPA pursuant to WAC197-11-800(19)(b).
5. Pursuant to RCW 36.70A.106(3)(b) the City requested expedited review of this Ordinance from the Department of Commerce. The Department of Commerce review period concluded on June 2, 2016.

From: COM GMU Review Team <reviewteam@commerce.wa.gov>
Sent: Thursday, June 02, 2016 6:58 AM
To: Jason Sullivan
Cc: Andersen, Dave (COM)
Subject: 22415, City of Bonney Lake, Expedited Review Granted, DevRegs

Dear Mr. Sullivan:

The City of Bonney Lake has been granted expedited review for the: Proposed Ordinance D16-79 recodifies Chapter 14.70 BLMC establishing the process and procedures the City will use to enter into development agreements. The Ordinance also establishes the flexibility that the City Council when entering into a development agreement. This proposal was submitted for the required state agency review under RCW 36.70A.106.

As of receipt of this email, the City of Bonney Lake has met the Growth Management Act notice to state agency requirements in RCW 36.70A.106 for this submittal. For the purpose of documentation, please keep this email as confirmation.

If you have any questions, please contact reviewteam@commerce.wa.gov.

Thank you.

Review Team, Growth Management Services
Department of Commerce
P.O. Box 42525
Olympia WA 98504-2525

City of Bonney Lake
City Council Agenda Bill (AB)

Department / Staff Member: PS/Jason Sullivan	Meeting/Workshop Date: November 8, 2016	Agenda Bill Number: AB16-79
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D16-79	Councilmember Sponsor: Katrina Minton-Davis

Agenda Subject: Establishing Process for Development Agreements

Full Title/Motion: An Ordinance of the City Council of the City Of Bonney Lake, Pierce County, Washington recodifying Chapter 14.70 and amending Sections 19.04.070 and 19.06.070 of the Bonney Lake Municipal Code relating to development agreements.

Administrative Recommendation: Approve

Background Summary: The Local Project Review Act, specifically RCW 36.70B.170 through RCW 36.70B.210 provides authority for cities to enter into development agreements. The proposed ordinance would establish a framework under which the City would review and enter into development agreements.

Attachments: Ordinance D16-79, Planning Commission Recommendation Memo, and Commerce Review

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
				<input type="checkbox"/> General <input type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation:				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee:	<i>Approvals:</i>	Yes	No
	Chair/Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
Committee Date:	Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
Forwarded to:	Consent Agenda: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Commission/Board Review: Planning Commission – June 15, 2016			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s): 7/19/16, 10/4/16, 10/18/16, and 11/1/2016	Public Hearing Date(s):
Meeting Date(s):	Tabled to:

APPROVALS		
Director: JPV	Mayor:	Date Reviewed by City Attorney: September 1, 2016 <small>(if applicable)</small>