

ORDINANCE NO. _____ (2005)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING BOTHELL MUNICIPAL CODE TITLE 12, ZONING, TO ESTABLISH REGULATIONS CONCERNING TRANSITORY ACCOMMODATIONS; AND PROVIDING FOR AN EFFECTIVE DATE AND SUMMARY PUBLICATION

WHEREAS, RCW 36.70A, also known as the Growth Management Act, provides that each jurisdiction's comprehensive land use plan and development regulations shall be subject to continuing review and evaluation; and

WHEREAS, in May, 2004, a temporary homeless encampment located on property owned by a church within the City of Bothell without first having obtained the approval of the City; and

WHEREAS, the Bothell Community Development Department and Bothell City Council determined that the City had no regulations directly applicable to homeless encampments and consequently required the encampment and its host church to seek a Special Conditional Use Permit; and

WHEREAS, the City Council, after holding a public hearing and deliberating, on July 19, 2004, issued a Special Conditional Use Permit allowing the encampment to occupy the church grounds for a 90-day period; and

WHEREAS, the City Council on September 7, 2004, initiated consideration of potential Code amendments to regulate transitory accommodations including but not limited to homeless encampments; and

WHEREAS, the City Council decided to create a citizens advisory committee to draft regulations concerning transitory accommodations, and on February 7, 2005, finalized appointments to an eight-member Transitory Accommodations Citizens Advisory Committee (TACAC); and

WHEREAS, the TACAC met on nine occasions and on April 27, 2005, forwarded draft Code amendments to the Planning Commission for its consideration; and

WHEREAS, the Planning Commission held a duly noticed public hearing to consider the TACAC recommendation on May 4 and 18 and June 1, 2005, and completed deliberations and forwarded recommended Transitory Accommodations Code Amendments to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing to consider the TACAC and Planning Commission recommendations on July 18, September 6, October 3 and November 7, 2005; and

WHEREAS, the Bothell Community Development Department on April 20, 2005, transmitted a copy of the proposed Transitory Accommodations Code Amendments to the Washington State Department of Community, Trade and Economic Development for its review, which transmittal met the requirement in the Growth Management Act that the state receive proposed amendments at least 60 days prior to the anticipated adoption date; and

WHEREAS, the Bothell Community Development Department on July 1, 2005, issued a Determination of Non-Significance which met the requirements of the State Environmental Policy Act (SEPA) for review of environmental impacts; and

WHEREAS, the City Council has determined that the Transitory Accommodations Code Amendments are in the public interest; and

WHEREAS, the City Council has adopted written Findings, Conclusions and Actions which provide a record of the process and issues involved in the Transitory Accommodations Code Amendments, and which are attached to this Ordinance as Exhibit A and incorporated by this reference as if set forth in full;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL DOES ORDAIN AS FOLLOWS:

Section 1. Bothell Municipal Code Title 12, Zoning, is hereby amended as set forth in Exhibit B attached hereto by this reference as if set forth in full.

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. Savings. The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 4. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 5. Effective date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

PATRICK D. EWING
MAYOR

ATTEST / AUTHENTICATED:

JOANNE TRUDEL
CITY CLERK

APPROVED AS TO FORM:

MICHAEL WEIGHT
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.: _____(2005)

SUMMARY OF ORDINANCE NO. _____ (2005)

City of Bothell, Washington

AN ORDINANCE OF THE CITY OF BOTHELL,
WASHINGTON, AMENDING BOTHELL MUNICIPAL
CODE TITLE 12, ZONING, TO ESTABLISH
REGULATIONS CONCERNING TRANSITORY
ACCOMMODATIONS; AND PROVIDING FOR AN
EFFECTIVE DATE AND SUMMARY PUBLICATION

On the _____ day of _____, _____, the City Council of
the City of Bothell passed Ordinance No. _____ (2005). A summary of the
content of said Ordinance, consisting of the title, is provided as follows:

The full text of this Ordinance will be mailed upon
request.

JOANNE TRUDEL
CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO: _____ (2005)

Transitory Accommodations Code Amendments City Council Findings, Conclusions and Action Exhibit A to Ordinance _____

Findings

1. The Bothell City Council on July 19, 2004, issued a Special Conditional Use Permit to allow a homeless encampment named Tent City 4 to occupy a portion of the St. Brendan Parish property for a total of 90 days, subject to conditions. The Special Conditional Use Permit process was necessary because the Bothell Municipal Code does not address homeless encampments, and the regulations for similar uses, such as campgrounds, were found not to meet the needs of homeless encampments.
2. The Council on September 7, 2004 initiated consideration of potential Code amendments to regulate transitory accommodations including but not limited to homeless encampments. The Council decided to create a citizens advisory committee to draft regulations concerning transitory accommodations. The committee would forward its recommendation to the Bothell Planning Commission, which would take public testimony, consider the committee's recommendation, modify the draft regulations as the Commission saw fit, and forward its own recommendation to the City Council. The Council would hold its own public hearing, consider the Commission's recommendations, modify the draft regulations as the Council deems appropriate, and adopt an ordinance amending the Bothell Municipal Code.
3. The Council on September 7, 2004 adopted a six-month moratorium on the establishment and operation of transitory accommodations. Subsequently, on February 28, 2005, the Council approved a six-month extension of the moratorium. The moratorium expired on September 9, 2005 (the six month period dated from the March 9, 2005 effective date of the moratorium extension).
4. The Council on February 7, 2005 finalized appointments to an eight-member Transitory Accommodations Citizens Advisory Committee (TACAC).
5. The TACAC met on the following dates, all in 2005:
 - February 22
 - March 1, 8, 15, 22 and 29
 - April 6, 12 and 27.

All meetings were open to the public, but public oral testimony was not taken during these meetings. Instead, citizens were asked to submit comments and suggestions in writing.

The TACAC reviewed the Tent City 4 Special Conditional Use Permit; a Temporary Use Permit issued by King County for a homeless encampment; the final report (and dissenting report) of the King County Citizens Advisory

Commission on Homeless Encampments (CACHE); a compendium of information on homeless encampments prepared by A Regional Coalition for Housing (ARCH); other background materials; and written comments submitted by citizens.

The TACAC deliberated on a number of issues relating to temporary accommodations, including the following:

- The definition of transitory accommodations;
- The process for evaluating and approving or denying a proposed transitory accommodation;
- How nearby schools should be involved in the process;
- Size of site;
- Setbacks from property line;
- Screening;
- Parking;
- Access to public transportation;
- Protection of critical areas;
- Restoration of the site upon cessation of the transitory accommodation;
- Duration and recurrence of the transitory accommodation;
- Health and safety;
- Conduct and security; and
- Indemnification and liability.

The TACAC recognized that the term “transitory accommodations” encompasses a wide variety of uses, and utilized three examples of such uses - a homeless encampment, a Boy Scout jamboree, and a motorcycle rally - as benchmarks against which to test draft Code language. The TACAC sought flexibility in the regulations to ensure that any conditions placed on a temporary accommodation would be appropriate to, and reasonable for, the particular accommodation.

The TACAC ultimately endorsed an approach wherein the Community Development Director would evaluate proposed transitory accommodations against a set of performance criteria which address the above issues. The Director would have the authority to approve, approve with conditions, or deny a permit for a transitory accommodation after evaluating the degree to which the proposed accommodation was likely to meet the performance criteria. The approach would allow any conditions of approval to be tailored to the characteristics of the particular proposed transitory accommodation.

On April 27, 2005, the TACAC completed its effort and forwarded draft Code amendments to the Planning Commission for its consideration.

6. The Planning Commission conducted public hearings and/or deliberations on the Transitory Accommodations Code Amendments on the following dates, all in 2005:
 - May 4 and 18;
 - June 1 (at which the Commission closed the public hearing) and 22 (deliberations only).

Notice of the above hearing dates was provided in the May and June *Imagine Bothell...* notices. The monthly *Imagine Bothell...* notice is distributed as follows;

- E-mailed or sent via U.S. Mail to approximately 210 individuals who have expressed current or past interest in City land use issues;
- Published in the legal advertising section of The King County Journal newspaper, the City's official newspaper of record, as well as in an affiliated publication, the Bothell-Kenmore Reporter;
- Posted on 12 freestanding notice boards located throughout the City (each of which includes a plastic bin in which extra copies of the notice are placed);
- Posted at Bothell City Hall, the Bothell Post Office, the Bothell Regional Library and the Canyon Park Shopping Center; and
- Placed on the City of Bothell website.

7. The following exhibits were submitted prior to or during the Planning Commission hearings:

Number	Name	When entered into record
1	Final Report and Recommendation of the Transitory Accommodations Citizen Advisory Committee (TACAC), memo from Manny Ocampo, Assistant City Manager, who facilitated the meetings of the TACAC	May 4, 2005
2	Proposed Transitory Accommodations Code Amendments - TACAC Consensus Recommendation	May 4, 2005
3	TACAC meeting agendas and notes	May 4, 2005
4	Submittals received from the public	May 4, 2005
5	Bothell Special Conditional Use Permit issued to Tent City 4	May 4, 2005
6	King County Citizens Advisory Committee on Homeless Encampments (CACHE) Final Report, with Dissenting Report	May 4, 2005
7	Temporary Use Permit Report and Decision, issued by King County Department of Development and Environmental Services	May 4, 2005
8	A compendium of homeless encampment-related materials assembled by A Regional Coalition for Housing (ARCH)	May 4, 2005
9	Article from Metropolitan King County Council Home Page, "Churches Speak in Support as Council Sets Standards for Homeless Encampments on Private Land"	May 4, 2005
10	Letter dated May 13, 2005, from Rodney T. Harmon to Bothell Planning Commission, with proposed revisions to TACAC recommendation	May 18, 2005
11	Draft City of Bellevue ordinance concerning temporary encampments, submitted by	May 18, 2005

Number	Name	When entered into record
	Norm Milliard	
12	E-mail dated May 18, 2005, from Sandra Lyons to Bothell Planning Commission	May 18, 2005
13	Letter dated May 18, 2005, from Gregory K. Jackson and David P. Wright, with accompanying memo entitled "Legal Issues Relating To Christian Religious Communities Hosting Tent City", by Mark F. Rising	May 18, 2005
14	"Suggestions for 'School Safety Zone Buffers'", prepared by Kevin S. Kelly, submitted by Norm Milliard	May 18, 2005
15	"Buffer Examples from Public & Private Schools", prepared by City of Bothell GIS Section for TACAC, submitted by Norm Milliard	May 18, 2005
16	Facility Usage / Indemnity Agreement between St. Brendan and SHARE/WHEEL, submitted by Norm Milliard	May 18, 2005
17	Highlighted excerpts from <i>Imagine Bothell...</i> Comprehensive Plan	June 1, 2005
18	Information sheet concerning the Interagency Council on Homelessness	June 1, 2005

8. The following individuals testified at the above Planning Commission hearings:

May 4, 2005:

- Paul O. Cowles
- Scott St. Clair
- Celeste Deveny
- Kevin Kelly
- Laurie Milliard
- Reverend Michael Schultz Rothermel
- Rod Harmon
- Norm Milliard
- Pat Pierce
- Steven Pyeatt
- Sylvia Cunningham

May 18, 2005:

- Greg Jackson
- Dave Wright
- Scott St. Clair
- Rod Harmon
- Norm Milliard

- Steven Pyeatt
- Pastor Michael Schultz Rothermel
- Laurie Milliard

June 1, 2005:

- Pat Pierce
- Rod Harmon
- Steven Pyeatt
- Norm Milliard

9. The Planning Commission lauded the TACAC for the time and effort committee members devoted to development of the draft transitory accommodation Code amendments, and for the quality of their product. Even so, Commission members raised a number of concerns, which ranged from minor to substantive.

Wishing to convey its respect for the work of the TACAC, the Commission decided to forward to the Council the TACAC's recommended language essentially intact, except for a small number of minor changes of a clarifying nature. TACAC members who chose to comment on these changes supported them. Finding 10 summarizes the minor revisions which were made to the TACAC proposal.

In addition, the Commission decided to transmit its substantive concerns via these Findings, Conclusions and Recommendations. The Commission included in the Findings potential Code revisions to address each of these concerns (with two exceptions), so that the Council would have language to consider should it concur with the Commission's concerns. Findings 11 through 17 detail these concerns and, with two exceptions, provide potential language to address them.

10. The Commission made the following minor revisions to the TACAC recommendation:
- Required a transitory accommodation host, sponsor and manager to jointly apply for a permit, and assigned equal responsibility to each for compliance with all conditions of the permit. The TACAC recommendation had not acknowledged that there might be three different parties involved in the establishment and operation of a transitory accommodation.
 - Defined "applicant" as the host, sponsor and manager collectively, and "proponent" as the host, sponsor and manager collectively prior to application for a permit.
 - Made substitutions throughout the document as necessary to use "applicant" and "proponent" consistently.
 - Refined the definition of "good faith" to encompass a willingness to reasonably accommodate each party's needs, desires and concerns.
 - Changed the section requiring access to public transportation to apply to transit stops rather than transit routes.
 - Clarified that certain conduct and security measures are to be determined by the Community Development Director in consultation with the Police Chief.
 - Clarified that the indemnification clause applies to acts or omissions of the applicant solely.

11. Substantive concern 1 - Time for compliance. The Commission recommended that the Council consider adding language to 12.06.160B.3.a.vi, Failure to comply, to prescribe a limit to the time an applicant has to correct a violation of a permit condition. The new language would read as follows (proposed new language underlined and bolded):

vi. Failure to comply. If a transitory accommodation permit has been issued, and the community development director determines that the applicant has violated any condition of that permit, the director shall issue a notice of violation and require compliance in accordance with the procedures set forth in BMC Chapter 11.20, Enforcement. Failure to correct the violation after a reasonable time for compliance, **but in no case longer than 48 hours from notification**, shall result in revocation of the permit. In such an event all activities associated with the accommodation shall cease immediately and the site shall immediately be vacated and restored to its pre-accommodation condition."

12. Substantive concern 2 - Failure to apply. The Commission recommended that the Council consider adding a section to address the establishment of a transitory accommodation without a permit. This section would follow 12.06.160B.3.a.vi, Failure to comply, and would read as follows (proposed new language underlined and bolded):

vii. Failure to apply. If a transitory accommodation for which a permit would be required is established without a permit first having been obtained, the Community Development Director shall require that all activities associated with the accommodation shall cease immediately and the site shall immediately be vacated and restored to its pre-accommodation condition unless and until such time as a transitory accommodation permit has been obtained.

13. Substantive concern 3 - Parking. The Commission recommended that the Council consider revising the Parking section (12.06.160B.3.b.iv) to better organize the issues, as follows (proposed new language underlined and bolded; proposed deleted language underlined and struck through):

iv. Parking. Adequate parking for the transitory accommodation shall be provided so as not to reduce parking utilized by existing surrounding uses. Where deemed necessary by the community development director, the applicant shall provide a proposed parking plan **which addresses the following** ~~consisting of the following:~~

(1) **A description of parking capacity, both on-site and on-street, that describes the amount and location of parking prior to the transitory accommodation and any displacement of parking resulting from the transitory accommodation; and** ~~The amount and location of available on-site parking;~~

~~(2) The availability of on-street parking;~~

~~(3) Whether the proposed use would displace established on-street parking; and~~

~~(2) (4) Any circumstances which may reduce the normal demand for parking, such as off-peak-season use; and/or any mechanisms or strategies to reduce parking demand, Whether the applicant proposes to utilize other mechanisms that might alleviate the need for additional parking, such as the provision of shuttle buses for the use of occupants of the transitory accommodations, or the provision of shared parking agreements with adjacent uses.~~

14. Substantive concern 4 - Recurrence. The Commission expressed three different viewpoints regarding whether, or how often, a transitory accommodation should be allowed to return to the same location (the section on recurring transitory accommodations is 12.06.160B.3.c.ii). There was not a majority of the Commission favoring one particular viewpoint. Consequently, the Commission decided to forward to the Council all three positions, which are as follows:
- Make no changes to the TACAC recommendation, which would allow recurring accommodations subject to reassessment by the Community Development Director prior to each recurrence. One Commissioner favored this position.
 - Allow a transitory accommodation to occupy a site no more than 90 days during any 36-month period. Under this approach, for example, an accommodation could occupy a site 30 consecutive days each year for three years in a row, or 90 consecutive days once every three years, or 45 consecutive days for two out of three years. Three Commissioners favored this position.
 - Allow one transitory accommodation every 36 months, regardless of whether it operated for one day or 90 days. Three Commissioners favored this position.
15. Substantive concern 5 - Health regulations. The Commission recommended that the Council consider revising the section on Health regulations (12.06.160B.3.d.i) to require bathing facilities where warranted, as follows (proposed new language underlined and bolded):
- i. Health regulations. All applicable city, county, and state regulations pertaining to public health shall be met. **Showers or other bathing facilities shall be provided where warranted based on duration of operation of the transitory accommodation or other considerations.**
16. Substantive concern 6 - Codes of conduct. The Commission recommended that the Council consider revising the section on codes of conduct (12.06.160B.3.e.iv) to require the applicant to provide such a code. The new language would read as

follows (proposed new language underlined and bolded; proposed deleted language underlined and struck through):

iv. Codes of conduct. **The applicant shall provide a written code of conduct, which** ~~If the occupants of a transitory accommodation have a written code of conduct, said code shall be incorporated into the conditions of approval.~~

17. Substantive concern 7 - Setbacks / buffers. The Commission deliberated at length concerning whether to recommend prescriptive buffers between transitory accommodations and schools. As proposed, the regulations would prescribe a minimum setback of "no less than 20 feet from the exterior boundaries of adjacent properties unless the owners of such properties consent in writing to a reduction or waiver of such setback". However, the Community Development Director would have the authority under the proposed regulations to establish greater setbacks from adjacent uses, depending on the characteristics of the transitory accommodation, regardless of whether the adjacent use is a school or other use. The Commission discussed different potential prescriptive buffer widths, and potential triggers for imposition of prescriptive buffers. When the issue was put to a vote, however, a majority of the Commissioners (4-3) supported the existing proposed language.
18. DCTED review. The Growth Management Act requires that all proposed amendments to comprehensive plans and development regulations be transmitted to the state Department of Community, Trade and Economic Development (DCTED) at least 60 days prior to the anticipated date of adoption. Accordingly, the Community Development Department transmitted the TACAC's draft regulations to DCTED on April 22, 2005. No comments were received from DCTED or any other state agency during the 60-day review period.
19. SEPA determination. The State Environmental Policy Act (SEPA) requires that the impacts of proposed land use actions, including certain types of Code amendments, be evaluated. The City SEPA Responsible Official issued a Determination of Non-Significance on July 1, 2005. No comments or appeals were received.
20. The City Council conducted public hearings and/or deliberations to consider the recommendations of the TACAC and the Planning Commission on the following dates, all in 2005:
 - July 18;
 - September 6;
 - October 3;
 - November 7 (closed public hearing);
 - November 21;
 - December 12;
 - December 19.

Notice of the above hearings and meetings was provided by the City Clerk and in the July, September, October, November and December, 2005, Imagine Bothell notice.

21. The following exhibits were submitted prior to or during the City Council hearings (numbering begins from the last exhibit submitted to the Planning Commission):

Number	Name	When entered into record
19	Letter and attachments submitted by Elaine Bridger and James Duvall, dated July 15, 2005	July 18, 2005
20	Comments by Sylvia Cunningham, TACAC member, submitted at July 18, 2005, Council meeting	July 18, 2005
21	E-mail from Bill Kirlin-Hackett, dated July 18, 2005	July 18, 2005
22	Comments by Bill Nash, TACAC member, submitted at July 18, 2005, Council meeting	July 18, 2005
23	Comments by Scott St. Clair, submitted at July 18, 2005, Council meeting	July 18, 2005
24	Copy of letter dated June 13, 2005, from The Church Council of Greater Seattle to Bellevue Mayor Connie Marshall, submitted by Lawrence Minder at July 18, 2005, Council meeting	July 18, 2005
25	Comments by Paula Quigg, submitted at July 18, 2005, Council meeting	July 18, 2005
26	E-mail from Tom Gaines, dated July 21, 2005	September 6, 2005
27	Letter and attachment from Elaine Bridger and James Duvall, dated July 26, 2005	September 6, 2005
28	Reprint of article from July 21, 2005, King County Journal titled, "Bellevue finally drafts ordinance for Tent City"	September 6, 2005
29	E-mail and attachment from Jim Duvall, dated July 20, 2005	September 6, 2005
30	Temporary encampments ordinance adopted by Bellevue City Council on July 25, 2005	September 6, 2005
31	Memo from Woodinville Community Development Director Ray Sturtz to Woodinville Planning Commission conveying proposed homeless encampment regulations, with attachments, for August 17, 2005 Planning Commission meeting	September 6, 2005
32	E-mail from Peter Grosvenor, dated September 6, 2005	September 6, 2005
33	Letter from Rev. David Wright, dated September 6, 2005, read into record and submitted in hard copy at September 6 Council meeting	September 6, 2005
34	Letter from Jeanne Lowman, dated September 6, 2005, read into record and	September 6, 2005

Number	Name	When entered into record
	submitted in hard copy at September 6 Council meeting	
35	Letter from Elaine Bridger and James Duvall, dated October 3, 2005 (Note - this was originally assigned Exhibit number 33, but was re-assigned number 35 after staff decided to assign exhibit numbers to the letters from David Wright and Jeanne Lowman, which were read into the record but also submitted in hard copy)	October 3, 2005
36	E-mail from Jack Stockman, dated September 6, 2005	November 7, 2005
37	E-mail from Jim DuVall, dated September 6, 2005	November 7, 2005
38	E-mail from Jim DuVall, dated September 13, 2005	November 7, 2005
39	E-mail from Jim DuVall, dated September 30, 2005	November 7, 2005
40	Letter from Rodney Harmon, dated October 3, 2005, with attachments	November 7, 2005
41	E-mail from Annie Roy, dated October 3, 2005	November 7, 2005
42	E-mail from Jim DuVall, dated October 7, 2005, with attachment	November 7, 2005
43	E-mail from Scott St. Clair, dated November 2, 2005	November 7, 2005
44	E-mail from Scott St. Clair, dated November 3 2005, with attached decision by City of Bellevue on Temple B'nai Torah and SHARE/WHEEL request for homeless encampment permit	November 7, 2005
45	E-mail from Evan Wipf, dated November 4, 2005	November 7, 2005
46	E-mail from Scott St. Clair, dated November 4, 2005	November 7, 2005
47	E-mail from Michael Schultz Rothermel, dated November 6, 2005	November 7, 2005
48	E-mail from Scott St. Clair, dated November 6, 2005	November 7, 2005
49	E-mail from Jim DuVall, dated November 6, 2005, with attached Seattle Times editorial	November 7, 2005
50	E-mail from Deb Melse, dated November 6, 2005	November 7, 2005
51	E-mail from Mary Pygott, dated November 6, 2005	November 7, 2005
52	E-mail from Judy Schnebele, dated November 7, 2005	November 7, 2005
53	E-mail from LauriBeth Hull, dated November 7, 2005	November 7, 2005

Number	Name	When entered into record
54	E-mail from Judy Schnebele, dated November 7, 2005	November 7, 2005
55	E-mail from Joseph Siebert, dated November 7, 2005	November 7, 2005
56	E-mail from Margy Rockenbeck, dated November 7, 2005	November 7, 2005
57	E-mail from Margaret Schwender, dated November 6, 2005, but received November 7	November 7, 2005
58	Letter from Donald W. Bagnall, dated November 7, 2005	November 7, 2005
59	Letter from Randy Nading, dated September 27, 2005	November 7, 2005
60	Letter from John Wright, dated October 24, 2005	November 7, 2005
61	Written remarks by Scott St. Clair, dated November 7, 2005, with attached Seattle Times articles and letter from Randy Nading	November 7, 2005
62	Letter from Cami Keyes, undated, provided by Scott St. Clair	November 7, 2005
63	E-mail and letters from Elizabeth Baumgartner, dated November 5, 2005, provided by Scott St. Clair	November 7, 2005
64	E-mail from John R. James, dated November 6, 2005, provided by Scott St. Clair	November 7, 2005
65	Seattle Times articles and "neighborhood comments", undated, provided by Norm Milliard	November 7, 2005

22. The following individuals testified at the above City Council hearings:

July 18, 2005:

- Bill Nash
- Scott St. Clair
- Kevin Kelly
- Steve Pyeatt
- Pat Pierce
- Reverend Michael Schultz Rothermel
- Rick Payne
- John Stolz
- Linda Braun
- Bob Lindquist
- Lawrence Minder
- Mary Boyce
- Mark Boyce

- Dorothy Johnson
- Marie Heddon
- Annette Feczko
- Cindy Honcoop
- Dennis DePape
- Scott Pelton
- Paula Quigg
- Curt Langkow
- Paul Cowles
- Rod Harmon

September 6, 2005:

- Reverend David Wright
- John Kirchgessner
- Laurie Milliard
- Peggy Ross
- Jeff Staley
- Mary Kathleen Gould
- Norm Milliard

October 3, 2005

- No testimony

November 7, 2005

- Scott Hansen
- Sylvia Cunningham
- Randy Nading
- Pat Pierce
- Michael Schultz Rothermel
- John Wright
- Karen Morris
- Scott St. Clair
- Laurie Milliard
- Arnie Brandon
- Dennis DePape
- Sanford Brown
- Steve Pyeatt
- Rod Harmon
- Norm Milliard
- Michael Challenger

23. The Council finds the recommendation of the Planning Commission, incorporating the TACAC recommendation with only clarifying revisions, to generally constitute a thoughtful, sensitive and thorough set of regulations addressing transitory accommodations. The Council appreciates the additional issues the Commission has identified as “substantive concerns”, which are

elucidated in Findings 11 through 17. The Council's consideration of the proposed regulations included specific deliberations on each of the Commission's substantive concerns: the results of these deliberations are summarized in an annotated version of the amendments which was included in the Council's September 6, October 3, November 7 and 21, and December 12 and 19 agenda packets, and which is hereby incorporated in these Findings.

24. The Council finds that the transitory accommodations Code amendments warrant strengthening via the following revisions from the Planning Commission recommendation (revisions listed in order in which they appear in the amendments):
- a. Amending BMC 12.06.010, Purpose, to specify that transitory accommodations are considered temporary uses even though they may be allowed, per BMC 12.06.160.B.3, for a longer period than the maximum of 60 days normally permitted for temporary uses; this amendment is necessary for internal Code consistency;
 - b. Adding a new sub-section, 12.06.160.B.3.a.iii, clarifying the submittal requirements for a TA permit application;
 - c. Adding child care facilities to the list of school facilities requiring advance discussion with TA proponents if within 600 feet of a proposed TA;
 - d. Adding the police chief to the community development director as the two staff positions whose decisions concerning transitory accommodations may be appealed to the hearing examiner;
 - e. Adding language to 12.06.160.B.3.b.ii requiring TAs to be located so as to minimize impacts on adjacent properties;
 - f. Replacing proposed parking regulations in 12.06.160.B.3.b.iv with language suggested by the Planning Commission under PC substantive concern 3 which provides for clearer organization of such regulations;
 - g. Clarifying the proposed "Access to public transportation" regulations in 12.06.160.B.3.b.v by adding language applying the regulations to situations where transitory accommodation occupants are anticipated to walk to public transportation services, and defining "one-half mile" as walking distance;
 - h. Deleting language recommended by the TACAC and Planning Commission addressing recurring transitory accommodations;
 - i. Revising proposed 12.06.160.B.3.e.iii to give the community development director and police chief equal authority to apply security criteria, rather than require the police chief to first consult with the director, as the TACAC and Planning Commission had recommended;
 - j. Requiring the provision by the TA applicant of a code of conduct, rather than leaving this as an option.

Conclusions

1. The proposed Transitory Accommodations Code Amendments establish an appropriate and reasonable process and performance criteria for the evaluation, permitting and conditioning of transitory accommodations.

2. The proposed Transitory Accommodations Code Amendments serve the public interest by promoting and protecting the health, safety and welfare of the people of Bothell.

Action

Based on these Findings and Conclusions, the City Council approves the Transitory Accommodations Code Amendments.

Transitory Accommodations Code Amendments

Exhibit B to Ordinance _____

Note – New language is shown in underline. Please disregard underlined section numbers: these underlines are automatically generated by the program which maintains the City’s online Code and cannot be removed.

12.06.010 Purpose.

The purpose of this chapter is to establish permitted land uses for the city of Bothell. The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained. The use is considered permanently established when that use will be or has been in continuous operation for a period exceeding 60 days, except that in no case shall a transitory accommodation, which may be allowed to operate continuously for a period of up to 90 days as set forth in BMC 12.06.160B.3.c, be considered permanently established. A use which will operate for ~~less than 60 days or less,~~ and transitory accommodations, are is considered a temporary uses, and are is subject to the requirements of BMC 12.06.160. All applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located within the Bothell city limits.

12.06.160 Temporary uses.

A. Use Table.

Temporary Uses	Zoning Classification										
	R1 R2	R3 R4 R5 R6	R8a R8d	R11	R15	R-AC	OP	NB	CB	GC	LI
Amusement rides, carnivals or circuses								P	P	P	
Christmas tree lots							P	P	P	P	
Community festivals and street fairs								P	P	P	
Construction sheds or trailers (1)	P	P	P	P	P	P	P	P	P	P	P
Fireworks stands								P	P	P	
Parking lot and sidewalk sales								P	P	P	
Personal wireless service facilities(2)	P	P	P	P	P	P	P	P	P	P	P
Seasonal sales of flowers or produce								P	P	P	
<u>Transitory Accommodations(3)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Yard and garage sales	P	P	P	P	P	P					

P: Permitted Use C: Conditional Use
 Numbers in parentheses reference use-specific development and operating conditions under B below.

B. Development and Operating Conditions.

1. Construction sheds and trailers are permitted on the subject property or on adjacent property with permission of the owner for the duration of the construction activity; provided, that such sheds and trailers are located in conformance with all required setbacks and no residential or other use shall be made of such sheds or trailers which is unrelated to the construction activity.
2. Temporary PWS facilities as defined in BMC [12.11.020](#) are permitted solely for the purposes of evaluating the technical feasibility of locating a permanent PWS facility upon the subject property and providing emergency services during natural disasters or other emergencies which may threaten the public health, safety and welfare.

The placement and use of temporary PWS facilities shall conform to required setbacks as specified in Chapter [12.11](#) BMC and shall be maintained in a good and safe condition, and shall comply with all federal, state and local rules and regulations.

A temporary PWS facility may be used to evaluate the technical feasibility of a particular site for no more than three days. No person may extend the three-day period through trivial or de minimis movements of a temporary PWS facility. Temporary PWS facilities may be used to provide emergency communications services during natural disasters or other emergencies, as determined by the director, which may threaten the public health, safety and welfare. (Ord. 1876 § 2, 2002; Ord. 1815 § 1, 2000; Ord. 1733 §§ 4 (Exh. C), 6, 1998; Ord. 1629 § 1, 1996).

3. “Transitory Accommodations” shall mean tents, sheds, huts, cabins, trailers or other enclosures which are not permanently attached to the ground, may be easily erected and dismantled, and are intended for temporary occupancy, usually for recreational or humanitarian purposes. Transitory accommodations are permitted provided the community development director determines on a case by case basis that such use possesses no characteristics which would adversely impact the community in any way, or that any potentially adverse characteristics can be adequately minimized and/or mitigated so as not to be materially detrimental to the community. Transitory accommodations can vary widely in their characteristics, which include but are not limited to size of site, surrounding land uses, duration, number of occupants, noise generation, and light and glare emanation. Accordingly, certain types of transitory accommodations may require the imposition of extensive conditions to mitigate potential adverse impacts to the community, while

others may not: in some cases, adequate mitigation of impacts may not be feasible, and a proposed transitory accommodation consequently may not be allowed. The community development director shall therefore have the authority to approve, approve with conditions, or deny a permit for a transitory accommodation proposal, after consideration of the performance criteria set forth herein.

a. Process

- i. A transitory accommodation permit shall be required prior to the commencement of such a use, unless the community development director determines, after consideration of the performance criteria set forth in this section, that the proposed transitory accommodation possesses no characteristics which might adversely impact the community. The prospective transitory accommodation host (property owner and lessee, if applicable), sponsor and manager shall jointly apply for the transitory accommodation permit and shall be equally responsible for compliance with all conditions of the permit. "Applicant", as used in these regulations, shall mean the transitory accommodation host, sponsor and manager. "Proponent", as used in these regulations, shall mean the prospective host, sponsor and manager prior to submittal of an application for a transitory accommodation permit.
- ii. A transitory accommodation permit is a Type II action and shall be processed accordingly, as set forth in BMC Title 11, Administration of Development Regulations, except that a pre-application conference and transportation concurrency review shall not be required. The permit fee shall be established by resolution of the city council.
- iii. The applicant shall identify potential adverse effects of the proposed transitory accommodation on neighboring properties and the community and shall develop measures to mitigate such effects. The applicant shall submit a transitory accommodations impact mitigation plan with the permit application. The plan shall contain a narrative and drawing(s) that describe, to the satisfaction of the community development director, the measures the applicant will use to mitigate the effects of the transitory accommodation. At a minimum, the plan shall specifically describe the measures that will be implemented to satisfy the approval criteria provided in BMC 12.06.160B.3.b through f, except for criteria specifically waived by the community development director. The plan shall include a code of conduct and the names and phone numbers of all persons comprising the applicant. The form and organization of the

mitigation plan shall be as specified by the community development director, but the elements of the plan shall be bound together. The approved transitory accommodation impact mitigation plan shall be signed by the community development director and the applicant, and implementation and enforcement of the plan shall be a condition of permit approval.

iv. Advance discussions with nearby child care facilities and schools.

- (1) Prior to applying for a transitory accommodation permit, the proponent shall provide written notice to any licensed child care facility and the administration of any public or private elementary, middle, junior high or high school within 600 feet of the boundaries of the proposed transitory accommodations site, and shall seek comments from said child care facility and school administration.
- (2) Where no comments are received, or where said child care facility(ies) or the administration of said school(s) is supportive of the proposal, the proponent shall submit an affidavit to this effect with the application.
- (3) Where said child care facility(ies) or the administration of said school(s) registers objections or concerns regarding the proposed transitory accommodations, the proponent shall attempt to resolve such objections or concerns via a negotiated mitigation plan between the proponent and the child care facility(ies) or school(s). Such a plan shall be submitted with the application and shall be incorporated in the conditions of the permit. Where the negotiations do not result in a mutually agreed upon mitigation plan within 30 days of receipt by the child care facility or school administration of the initial notice from the proponent, but the parties desire to continue to pursue resolution of the issues, the parties may request mediation services from or through the City. In the event the parties cannot reach agreement after a good faith effort of at least 30 days from receipt by the child care facility or the school administration of the initial notice from the proponent, the proponent may submit an application but shall provide a record of the negotiations between the parties, including but not limited to copies of all correspondence and meeting notes. In evaluating the application against the performance criteria set forth herein, the director shall consider the topic(s) of the unsuccessful negotiations and the extent to which the parties demonstrated good faith in their discussions. "Good faith" in

this context shall mean a recognition of the legitimacy of, and a willingness to reasonably accommodate, each party's needs, desires and concerns.

v. Decisions of the community development director and/or police chief may be appealed. Such appeals shall be heard and decided by the hearing examiner in accordance with the procedures set forth in BMC 11.12.010.

vi. Emergencies. The community development director may waive these requirements when a natural or man-made disaster necessitates the immediate establishment of transitory accommodations.

vii. Failure to comply. If a transitory accommodation permit has been issued, and the community development director determines that the applicant has violated any condition of that permit, the director shall issue a notice of violation and require compliance in accordance with the procedures set forth in BMC Chapter 11.20, Enforcement. Failure to correct the violation after a reasonable time for compliance shall result in revocation of the permit. In such an event all activities associated with the accommodation shall cease immediately and the site shall immediately be vacated and restored to its pre-accommodation condition.

b. Site performance criteria.

i. Size. The site shall be of sufficient land area to support the activities of the transitory accommodation without overcrowding of occupants, intruding into required setbacks or critical areas, destroying vegetation, eroding soils or otherwise overtaxing the land. Where deemed necessary by the community development director, the applicant shall provide a site plan indicating the location of the proposed transitory accommodation on the host property; its area in square feet; and the proposed distribution of, and allocation of space for, anticipated activities including but not limited to sleeping, eating, socializing, and bathing and other personal functions.

ii. Setbacks from property line. All activities of the transitory accommodation shall be set back from adjacent properties a sufficient distance so as not to impinge upon or otherwise unduly influence activities on said adjacent properties. The transitory accommodation shall be positioned on the property in the location that results in the least adverse impact to occupants of neighboring

properties. The community development director may require the applicant to change the proposed location of the transitory accommodation to mitigate adverse impacts to occupants of neighboring properties. Where deemed necessary by the community development director, the applicant shall provide a site plan indicating buildings and uses on properties surrounding the proposed transitory accommodation, and the distance the proposed accommodation would be set back from surrounding property lines. A transitory accommodation shall be set back no less than 20 feet from the exterior boundary lines of adjacent properties unless the owners of such properties consent in writing to a reduction or waiver of such setback.

iii. Screening of activities. Where deemed necessary by the community development director, activities of the transitory accommodation shall be obscured from view from adjacent properties, by a minimum six foot high temporary fence, an existing fence, existing dense vegetation, an existing topographic difference, distance from exterior property lines, or other means, to the maximum extent feasible.

iv. Parking. Adequate parking for the transitory accommodation shall be provided so as not to reduce parking utilized by existing surrounding uses. Where deemed necessary by the community development director, the applicant shall provide a proposed parking plan which addresses the following:

(1) A description of parking capacity, both on-site and on-street, that describes the amount and location of parking prior to the transitory accommodation and any displacement of parking resulting from the transitory accommodation; and

(2) Any circumstances which may reduce the normal demand for parking, such as off-peak-season use; and/or any mechanisms or strategies to reduce parking demand, such as the provision of shuttle buses for the use of occupants of the transitory accommodations, or the provision of shared parking agreements with adjacent uses.

v. Access to public transportation. Where occupants of a proposed transitory accommodation are anticipated to walk to public transportation services, said accommodation shall be located no farther than one-half mile walking distance from a regular public transportation stop.

vi. Critical areas. All proposed transitory accommodations shall comply with the City's critical areas regulations as set forth in BMC Chapter 14.04. Where deemed necessary by the community development director, the applicant shall provide a site plan indicating the presence and extent of any critical areas.

vii. Restoration of site. Upon cessation of the temporary accommodation, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the community development director, the applicant shall re-plant areas in which vegetation had been removed or destroyed.

c. Duration performance criteria.

i. Length of time. The proposed transitory accommodations shall be in operation the minimal length of time necessary to achieve the recreational, humanitarian or other objective(s) of the applicant. Where deemed necessary by the community development director, the applicant shall provide a narrative explaining the objective(s) the applicant seeks to achieve, and the amount of time the applicant believes necessary to achieve that objective. However, under no circumstances shall a proposed transitory accommodation be allowed in one location for more than 90 days, either consecutively or cumulatively, during any 12-month period, except that where the 90th day falls on a Friday, an additional two days shall be allowed to dismantle and remove the accommodation over the immediately following weekend.

d. Health and safety performance criteria. Transitory accommodations shall be operated in such a manner as to ensure the health and safety of occupants of the subject and surrounding properties. Accordingly, all transitory accommodations shall comply with the following:

i. Health regulations. All applicable city, county and state regulations pertaining to public health shall be met.

ii. Fire safety. Inspections of the accommodation by the City for fire safety purposes may be conducted at any time and without prior notice. Adequate access, as determined by the Fire Marshal, shall be maintained within and around the accommodation at all times to ensure that emergency vehicles can ingress/egress the site.

iii. Building code inspections. Inspections of the accommodation by the City to ensure the public health and safety with regard to structures may be conducted at any time and without prior notice.

- iv. Drinking water and solid waste. An adequate supply of potable water shall be available on-site at all times. Adequate toilet facilities shall be provided on-site, as determined by the public works director. All city, county and state regulations pertaining to drinking water connections and solid waste disposal shall be met.
- v. Trash. Adequate facilities for dealing with trash shall be provided on-site. A regular trash patrol or other method of regular maintenance in the immediate vicinity of the site shall be provided.
- e. Conduct and security performance criteria.
 - i. Noise. Any transitory accommodation shall comply with City noise regulations as set forth in BMC Chapter 8.26. Where deemed necessary by the community development director, the applicant shall provide a plan to mitigate potential noise impacts.
 - ii. Light and glare. Any transitory accommodation shall comply with City light and glare regulations as set forth in BMC Chapter 8.64. Where deemed necessary by the community development director, the applicant shall provide a plan to mitigate potential light and glare impacts.
 - iii. Security. Any transitory accommodation shall comply with City regulations regarding lawful behavior as set forth in BMC Title 9, Criminal Code. Any transitory accommodation shall provide all required legal access to public areas of the site by the City of Bothell Police Department and any other relevant law enforcement agency at all times. Additionally, where deemed necessary by the community development director or the police chief, the applicant shall provide for the following:
 - (a) The applicant shall take all reasonable and legal steps to obtain verifiable identification, such as a valid driver's license, government issued identification card, military identification card, or passport, from all prospective and current camp residents.
 - (b) The applicant will use such identification to obtain warrant and sex offender checks from the King or Snohomish County Sheriff's office or other relevant authority. The anonymity of the requesting party shall be maintained.

(c) If said check reveals that the subject of the check is a sex offender, required to register with the City, County or State authorities pursuant to RCW 9A.44.130, then the applicant shall immediately reject the subject of the check for residency in the transitory accommodation or eject the subject of the check if that person is currently a resident of the accommodation, and shall immediately notify the Bothell Police Department of such rejection or ejection.

(d) If said check reveals that the subject of the check has an existing or outstanding warrant, then the applicant may select either of the following alternative actions:

(1) Immediately reject or eject the subject of the check and immediately notify the Bothell Police Department of such rejection or ejection; or

(2) Request the Bothell Police Department to confer with the agency or court of jurisdiction from which the warrant originated to determine whether or not said agency or court desires the warrant to be served. If the originating agency or court desires the warrant to be served, the Bothell Police Department shall do so immediately. If the originating agency or court declines warrant service, due to the minor nature of the offense for which the warrant was issued or for other reasons, the subject may enter or remain in the transitory accommodation, provided that the applicant actively assists the subject in resolving the warrant.

(e) The applicant shall keep a log of all individuals who stay overnight in the transitory accommodation, including names and dates. Logs shall be kept for a minimum of six months.

(f) The applicant shall provide on-site security, as approved by the community development director in consultation with the City of Bothell Police Department.

iv. Codes of conduct. The applicant shall provide and enforce a written code of conduct which mitigates impacts to neighbors and the community. Said code shall be incorporated into the conditions of approval.

f. Other performance criteria.

- i. Indemnification. The applicant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits of any nature, including attorney fees, due to the acts or omissions of the applicant in connection with the operation of the transitory accommodation.
- ii. Liability insurance. Where deemed necessary by the community development director, the applicant shall procure and maintain in full force, through the duration of the transitory accommodation, comprehensive general liability insurance with a minimum coverage of \$1,000,000 per occurrence / aggregate for personal injury and property damage.
- iii. Other criteria. Where deemed necessary, the community development director may identify other performance criteria; require the applicant to describe the potential impacts of the proposed transitory accommodation with respect to those criteria; and determine if measures are warranted to minimize or otherwise mitigate such impacts.