

CITY OF ARLINGTON, WASHINGTON

ORDINANCE NO. 1458

AN ORDINANCE ANNEXING TO THE CITY OF ARLINGTON A PORTION OF SECTION 8, SECTION 16, AND SECTION 17 OF TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., SNOHOMISH COUNTY, WASHINGTON, COMMONLY KNOWN AS THE ISLAND CROSSING ANNEXATION

WHEREAS, the matter of the passage of this ordinance came before the City Council this day; and

WHEREAS, the annexation comprised of approximately 210 acres and commonly known as the Island Crossing annexation was referred to the Snohomish County Boundary Review Board ("BRB") pursuant to City of Arlington Resolution Number 673, adopted on December 15, 2003; and

WHEREAS, the City filed its notice of intent to annex with the BRB on or about January 12, 2004; and

WHEREAS, the legal description of said annexation was further modified by City of Arlington Resolution Number 675, adopted on February 17, 2004; and

WHEREAS, on February 13, 2004, the Snohomish County Council unanimously passed its Motion No. 04-043, in which the County Council found that the Island Crossing portion of the Arlington Urban Growth Area (UGA) "is an important part of the Arlington UGA...and as such will be the recipient of future urban growth for the City and the County", and by which the Council affirmed it did not oppose the annexation and would not invoke BRB jurisdiction;

WHEREAS, the Stillaguamish Flood Control District filed a request with the BRB on February 25, 2004, which asked the BRB to invoke jurisdiction over the Island Crossing annexation; and

WHEREAS, there was also filed with the BRB a citizens' petition by Robert Grimm and others (the "Citizens Petition"), which the BRB determined was untimely filed; and

WHEREAS on March 22, 2004, the Central Puget Sound Growth Management Hearings Board ("CPSGMHB") issued a Final Decision and Order ("FDO") which determined that Snohomish County's Ordinance No. 03-063, which had previously amended the Arlington UGA to include a portion of the area within the Island Crossing annexation area, was not in compliance with the Growth Management Act (GMA) and invalidated that ordinance and remanded it to Snohomish County for further proceedings; and

WHEREAS, on April 12, 2004, the BRB determined that the Stillaguamish Flood Control District did not have standing as a “governmental unit affected” by the annexation under RCW 36.93.100; and

WHEREAS, the County Council, in order to comply with the CPSGMHB decision, conducted further hearings and, on May 24, 2004, did adopt its Emergency Ordinance No. 04-057, which adopted written findings and conclusions once again supporting the proposed expansion of the Arlington UGA to include the portion of the area within the proposed Island Crossing annexation; and

WHEREAS, on June 1, 2004, the CPSGMHB issued an “Order Rescinding the April 9, 2004 Order Rescinding Findings of Noncompliance and Invalidity” (“Order Rescinding”), which further held that the county’s plan including the Island Crossing UGA designation was invalid pending a compliance hearing; and

WHEREAS, the CPSGMHB on June 24, 2004 issued an Order Finding Continued Noncompliance and Continuing Invalidity and Recommending Gubernatorial Sanctions (“the Compliance Order”); and

WHEREAS, the County Council adopted its Resolution #05-001 on January 4, 2005, which stated its intention or policy to take no legislative action until the CPSGMHB decision was reversed by a court of competent jurisdiction; and

WHEREAS, the decisions of the CPSBMHB including the FDO and the Compliance Order were appealed by Snohomish County, by the City of Arlington and by Dwayne Lane to the Snohomish County Superior Court; and

WHEREAS, the CPSGMHB determined that Resolution 05-001 was sufficient to remove the request for gubernatorial sanctions; and

WHEREAS, the decision of the Boundary Review Board determining that the Stillaguamish Flood Control District had no legal standing to invoke the jurisdiction of the BRB was upheld by the King County Superior Court under King County Superior Court #04-2-10450-5 SEA, and that decision was never appealed and is therefore final; and

WHEREAS, although the Snohomish County Superior Court upheld the decisions of the CPSGMHB under consolidated Snohomish County Superior Court case #04-2-09180-1, Snohomish County, the City of Arlington, and Dwayne Lane subsequently appealed the decisions to the Court of Appeals; and

WHEREAS, the Court of Appeals, under City of Arlington, Snohomish County and Dwayne Lane v. Central Puget Sound Growth Management Hearings Board, 138 Wn. App. 1 (2007), reversed the decisions of the CPSGMHB, and held that the County’s decision to remove

the agricultural land designations and to include the Island Crossing area within Arlington's UGA was entitled to deference and should have been upheld by the Hearings Board; and

WHEREAS, the Court of Appeals held that "We hold the [CPSGMHB] erred in finding the County committed clear error in concluding that the land at Island Crossing had no long term commercial significance to agricultural production", and "we hold the [CPSGMHB] erred in finding the County committed clear error in including the land in Island Crossing within the newly expanded UGA"; and

WHEREAS, the decision of the Court of Appeals was appealed to the Washington State Supreme Court, and the Supreme Court issued an opinion on October 9, 2008, which upheld the decision of the Court of Appeals under Supreme Court case #80395-1, incorporated by reference the foregoing findings of the Court of Appeals as its own, and denied the appeal and upheld the decision of Snohomish County and the Court of Appeals; and

WHEREAS, the Supreme Court issued its mandate on November 5, 2008, which remanded the matter for a decision consistent with the opinion of the court, meaning that no further review is anticipated or appropriate; and

WHEREAS, under the provisions of Snohomish County Code §2.48.160 and well-established Washington law, Snohomish County Resolution 05-001 represents a statement of policy or opinion, but does not have the force of law; and

WHEREAS, with the issuance of the mandate by the Supreme Court, Snohomish County Ordinance 04-057 is presumed to be valid and in effect; and

WHEREAS, the Boundary Review Board has expressly determined that no party with legal authority under RCW Chapter 36.93 properly or timely invoked the jurisdiction of the Boundary Review Board to review said annexation and that the annexation is deemed approved by the BRB under the provisions of RCW 36.93.100; and

WHEREAS, while the controversy and multi-faceted legal battle over the Island Crossing Annexation principally involved the approximately 110 acres which was added to the Arlington UGA by Ordinance No. 03-063 and again in Ordinance No. 04-057, approximately 100 additional acres of land in areas not in dispute are within the proposed annexation area, and the property owners and residents within that additional area who have sought to annex to Arlington have continued to be adversely affected by the prolonged legal dispute and delayed in their efforts to develop their properties and annex to the City of Arlington; and

WHEREAS, the City of Arlington, believing that the County Council, which correctly and successfully argued its case before the appellate courts of this state, has fully complied with the requirements of the Growth Management Act, and believing that all of the residents of the County and owners within the proposed Island Crossing annexation area, including both the area of controversy and the upland areas which have never been in controversy, are entitled to

certainty and finality following the decision of the highest court of our state, now wishes to formally annex the area pursuant to the request from the property owners;

NOW THEREFORE, THE CITY COUNCIL OF ARLINGTON, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. The following described property be and it is hereby annexed to and included within the corporate limits of the City of Arlington, Snohomish County, State of Washington:

See legal description attached hereto as Exhibit "A",

said property to be assessed and taxed at the same general rate and on the same general basis as the property in the City of Arlington is assessed and taxed to pay for any presently outstanding indebtedness of the City of Arlington which has been contracted prior hereto, or exists at, the date of this annexation.

Section 2. The properties shall have the Comprehensive Plan land use designations of Airport Industrial and Highway Commercial and the zoning designations of Light Industrial and Highway Commercial as shown on Exhibit "B" (map of annexing area).

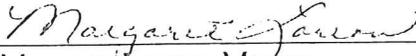
Section 3. The resident population of the annexed area shall be determined by, or under the direction of the Mayor, and the certificate shall be submitted, all in accordance with RCW 35A.14.700; the City Clerk shall submit five certified copies of this ordinance to the County Council of Snohomish County, through the Snohomish County Boundary Review Board; the City Clerk shall submit a certified copy of this ordinance to the Washington Survey and Rating Bureau; and the City Clerk shall take such other action as is required by law as a result of this annexation.

Section 4. If any provision, section, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

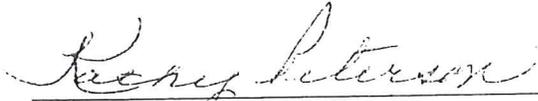
Section 5. This ordinance shall be effective five days after its passage and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor, at a regular meeting of the City Council called on the 17<sup>th</sup> day of November, 2008.

CITY OF ARLINGTON

  
Margaret Larson, Mayor

ATTEST:

  
\_\_\_\_\_  
Kathy Peterson, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Steven J. Peiffle, WSBA #14704  
City Attorney

**Proposed Island Crossing Annexation to the City of Arlington  
Land Description**

That portion of Section 8, Section 16, and Section 17 of Township 31 North, Range 5 East, W.M., situated in the County of Snohomish, State of Washington, described as follows;

**Beginning** at the Northeast Corner of the Southwest Quarter of said Section 8; thence South  $0^{\circ}42'45''$  West along the east line of the Southwest Quarter of said Section 8, for a distance of 54.48 feet to the south right-of-way margin of State Route 530; thence North  $87^{\circ}41'41''$  East along said south right-of-way margin for a distance of 862.97 feet to the easterly right-of-way margin of the public road conveyed to Snohomish County by deed recorded under Volume 202, Page 463, records of Snohomish County, Washington; thence southwesterly along said easterly right-of-way along a non-tangent curve to the left, from which the radius point bears South  $2^{\circ}18'19''$  East, having a radius of 878.00 feet, for an arc length of 1332.91 feet to the east line of the West 30.00 feet of the Southeast Quarter of said Section 8; thence South  $0^{\circ}42'45''$  West along said east line, for a distance of 1559.68 feet to the north line of said Section 17; thence South  $1^{\circ}09'28''$  West along the east line of the West 30.00 feet of the Northeast Quarter of said Section 17, for a distance of 1169.62 feet to the east right-of-way margin of Old P.S.H. No. 1 as shown on the W.S.D.O.T. plans dated approved Sept. 7, 1966; thence South  $25^{\circ}05'58''$  East along said east margin, for a distance of 180.43 feet; thence South  $35^{\circ}33'51''$  East along said east margin, for a distance of 251.67 feet; thence South  $30^{\circ}10'16''$  East along said east margin, for a distance of 376.20 feet; thence South  $7^{\circ}51'09''$  East along said east margin, for a distance of 80.71 feet to the northwest corner of that certain parcel of land conveyed by deed recorded under AFN 200208050937, records of Snohomish County, Washington; thence South  $89^{\circ}24'54''$  East along the north line of said AFN 200208050937, for a distance of 307.87 feet; thence South  $1^{\circ}06'38''$  West along the east line of said AFN 200208050937, the east line of that certain tract of land conveyed by deed recorded under AFN 200008020300, records of Snohomish County, Washington, and the southerly extension thereof, for a distance of 619.60 feet to the north line of that certain tract of land conveyed by deed recorded under AFN 2379142, records of Snohomish County, Washington; thence South  $89^{\circ}30'11''$  East along the north line of said AFN 2379142, for a distance of 134.16 feet to the northeast corner of said AFN 2379142; thence South  $1^{\circ}06'38''$  West along the east line of said AFN 2379142, for a distance of 100.00 feet to the north line of the Southeast Quarter of said Section 17, being also the northeast corner of that certain tract of land conveyed by deed recorded under AFN 2176257, records of Snohomish County, Washington; thence South  $25^{\circ}20'49''$  East along the east line of said AFN 2176257, for a distance of 200.00 feet; thence North  $89^{\circ}30'11''$  West parallel with said north line, for a distance of 200.00 feet to the east right-of-way margin of Smokey Point Blvd.; thence South  $25^{\circ}20'49''$  East along said east right-of-way, for a distance of 671.52 feet to the north line of that certain tract of land conveyed by deed recorded under AFN 1791782, records of Snohomish County, Washington; thence South  $70^{\circ}36'31''$  East along said north line, for a distance of 938.66 feet to the northeast corner of said AFN 1791782; thence South  $0^{\circ}52'38''$  West along the east line of said AFN 1791782, for a distance of 80.00 feet to the northwest corner of Parcel "B" as described under AFN 2291602, records of Snohomish County, Washington; thence South  $88^{\circ}58'26''$  East along the north line of said Parcel "B", for a distance of 84.79 feet to the northeast corner of said Parcel "B"; thence South  $1^{\circ}21'14''$  West along the east line of said Parcel "B", for a distance of 150.00 feet; thence South  $15^{\circ}44'10''$  West along the east line of said Parcel "B", for a distance of 2.79 feet to the north line of the Southeast Quarter of the Southeast Quarter of said Section 17; thence South  $89^{\circ}14'42''$  East along said north line, for a distance of 570.87 feet to the northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 17; thence South  $0^{\circ}57'47''$  West along the east line of the Southeast Quarter of the Southeast Quarter of said Section 17, for a distance of 512.31 feet; thence South  $89^{\circ}02'13''$  East for a distance of 658.41 feet to the northwest corner of that certain tract of land conveyed by deed recorded under AFN 200212031514, records of Snohomish County, Washington, being a point on the west line of the East Half of the West Half of the Southwest Quarter of said Section 16; thence South  $0^{\circ}48'25''$

West along said west line, for a distance of 797.72 feet to the north right-of-way margin of 188<sup>th</sup> Street N.E.; thence North 88°32'51" West along said north right-of-way for a distance of 660.51 feet to the east line of said Section 17; thence North 88°59'16" West along said north right-of-way, and the extension thereof, for a distance of 1866.22 feet to a point 219.44 feet east of, as measured perpendicular from, the principal centerline of S.R. 5 as shown on the W.S.D.O.T. plans dated approved Sept. 7, 1966; thence North 0°39'01" West for a distance of 270.11 feet to the southwesterly corner of Rest Area No. RAI-D-128 lying East of the said principal centerline as shown on said S.R. 5 plans; thence South 88°59'16" East along the boundary of said Rest Area, for a distance of 547.60 feet; thence North 1°07'46" East along the boundary of said Rest Area, for a distance of 931.69 feet; thence South 65°21'45" West along the boundary of said Rest Area, for a distance of 156.19 feet; thence North 20°43'52" West along the boundary of said Rest Area, for a distance of 178.13 feet; thence North 89°13'05" West along the boundary of said Rest Area, for a distance of 533.03 feet to the Easterly margin of said S. R. 5; thence North 5°43'50" West, along the Easterly margin of said S. R. 5 for a distance of 637.74 feet; thence North 9°18'24" West, along the said Easterly margin, a distance of 400.78 feet; thence North 5°43'50" West along said easterly margin, a distance of 528.02 feet; thence continuing along said margin northwesterly along a curve to the left, having a central angle of 3°45'12", a radius of 3970.00 feet, and an arc length of 260.07 feet; thence South 89°28'12" East along said easterly margin, a distance of 111.56 feet; thence North 11°00'00" West along said easterly margin, a distance of 212.62 feet; thence continuing along said margin Northwesterly along a curve left, having a central angle of 22°00'00", a radius of 685.00 feet, an arc length of 263.02 feet; thence North 33°00'00" West, along said margin, a distance of 440.26 feet; thence continuing along said margin Northerly, along a curve to the right, having a central angle of 33°38'42", a radius of 315.00 feet, an arc length of 184.97 feet; thence North 88°50'32" West, along said east margin, a distance of 23.56 feet; thence North 1°09'28" East along said easterly margin, for a distance of 74.91 feet to an angle point on the east right-of-way margin of S.R. 5 as shown on said W.S.D.O.T. plans; thence northerly along said east right-of-way, along a non-tangent curve to the left, from which the radius point bears South 64°15'49" West, having a radius of 3970.00 feet, through a central angle of 4°08'39", for an arc distance of 287.15 feet; thence North 29°52'50" West along the said east right-of-way of S.R. 5 dated September 7, 1966, and the east right-of-way of S.R. 5 as shown on W.S.D.O.T. plans dated approved Oct. 4, 1955 and June 4, 1963, for a distance of 2643.43 feet; thence North 25°35'29" West along said east right-of-way, for a distance of 401.12 feet; thence North 15°50'39" West along said east right-of-way, for a distance of 185.54 feet; thence North 2°08'32" West along said east right-of-way, for a distance of 267.30 feet; thence North 0°57'52" East leaving said right-of-way, for a distance of 210.34 feet to a point 100.00 feet north of the I-E centerline station 202+75 of said W.S.D.O.T. plans, as measured perpendicular from said centerline; thence North 37°50'35" West along said east right-of-way, for a distance of 172.05 feet; thence North 69°32'23" West along said east right-of-way, for a distance of 334.40 feet; thence North 51°40'55" West along said east right-of-way, for a distance of 188.48 feet; thence North 35°35'28" West along said east right-of-way, for a distance of 201.00 feet; thence North 29°52'50" West along said east right-of-way, for a distance of 50.01 feet to the north line of that certain tract of land conveyed by deed recorded under AFN 9706020703, records of Snohomish County, Washington; thence North 88°16'25" East along said north line, for a distance of 731.41 feet to the west line of that certain tract of land conveyed by deed recorded under AFN 200308200203, records of Snohomish County, Washington; thence North 0°53'59" East along said west line, for a distance of 31.52 feet to the northwest corner of said AFN 200308200203; thence North 87°39'51" East along the north line of said AFN 200308200203, for a distance of 417.33 feet to the west line of that certain tract of land conveyed by deed recorded under AFN 9505180014, records of Snohomish County, Washington; thence North 0°46'28" East along said west line, for a distance of 69.66 feet to the northwest corner of said AFN 9505180014; thence North 87°10'15" East along the north line of said AFN 9505180014, for a distance of 626.25 feet to the northeast corner of said AFN 9505180014; thence South 2°20'45" East along the east line of said AFN 9505180014, for a distance of 161.54 feet to the north line of that certain tract of land conveyed by deed recorded under AFN 9604180418, records of

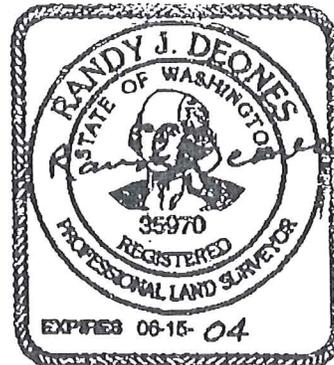
Snohomish County, Washington; thence North 87°39'51" East along said north line and the extension thereof, for a distance of 699.31 feet to the east line of the Northwest Quarter of said Section 8; thence South 0°42'45" West along said east line, for a distance of 639.36 feet to the **Point of Beginning**.

**EXCEPT that portion** of the Southwest Quarter of Section 8, Township 31 North, Range 5 East, W.M., described as follows;

Commencing at the intersection of the centerline of State Route 530 and the east line of the Southwest Quarter of said Section 8; thence South 86°39'30" West, along the centerline of State Highway No. 1-E, for a distance of 556.00 feet; thence South 3°20'30" East, a distance of 50.00 feet to the Southerly margin of said highway and the **True Point of Beginning**; thence continue South 3°20'30" East, a distance of 35.00 feet; thence South 86°39'30" West, a distance of 25.00 feet; thence North 3°20'30" West, a distance of 35.00 feet; thence North 86°39'30" East, a distance of 25.00 feet to the **True Point of Beginning**.

(Also known as County Tax Parcel No. 31050800302200)

Containing approximately 210 acres.



2-12-04