



**Public Safety/Legal Committee
City Hall – 200 NE Moe Street
3rd Floor Conference Room**

Subject	Regular Meeting Minutes	Date	10/21/15
Recorder	Sue Rufener/Police Clerk	Start Time	4:00 PM
Committee Chair	CC Kenneth Thomas	End Time	5:00 PM
Committee Members	CM Jeff McGinty; CM Jim Henry; CM Kenneth Thomas		
Staff Expected to be present	Mayor Becky Erickson; Court Administrator Linda Baker; CP Kylie Purves; Chief Al Townsend; Judge Jeff Tolman; Jeff Russell (Poulsbo Fire)		

Agenda

No.	Topic	Action/Recommendation/Discussion
1.	Administrative:	
	a. Approval of September Minutes	
	b. Introduction of Matt Duthie (Mayor)	Mayor Erickson introduced Matt Duthie and spoke about how he splits his time between KMH and Poulsbo; Helps connect people with resources; provides guidance to keep them compliant and has met with the Crisis Intervention Officer. Matt has started attending Wednesday court proceedings
2.	Questions & Concerns of the Committee:	
	a. Body Cam update (CM Henry)	Chief Townsend & CP Purves discussed the legislation that is continuing to be worked on and the necessity for the legislation for implementation of body cams with other agencies
	b.	
	c.	
3.	Municipal Court:	
	a. Kudos to Linda from Granger Muni Ct	Judge Tolman read a letter received with kudos to CA Baker for being available for other courts around the state.
	b. Blazina (Handout)	Judge Tolman discussed the Supreme Courts' ruling in reference to the imposition of legal financial obligations; spoke about the rules, discretionary fines & community service. CA Baker advised this only applies to criminal matter not civil. CP Purves advised that all fees for diversion agreements stay in house.
	c. Judge Roof	Judge Tolman mentioned that Judge Roof is retiring after 45 years on the bench
4.	Police:	
	a. Fee Schedule (Handout)	Chief Townsend discussed the fee schedule changes. No cost for reports; alarm registration fee changes; changes in off duty work rate.
	b. Parking	Chief Townsend discussed habitual offenders of the parking laws; CP Purves will draft a plan to address the issue

	c.	
5.	City Prosecutor:	
	a. Fireworks (Handout)	CP Purves presented a proposed amendment to the Fireworks ordinance giving the ability to ban the discharge of fireworks to the Fire Chief or his designee. B/C Russell requested some change in verbiage; CM McGinty discussed the need for information as to how this would be triggered. B/C Russell discussed the prediction process and how this would be done in conjunction with the City. Mayor Erickson advised there will be a notification plan developed.
	b. Animal Control (Handout)	CP Purves discussed the Humane Society recommendations to better protect pets; bring Poulsbo's policy consistent with other agencies in the county; The Humane Society Director will speak to council at the December 1 st Council Meeting
	c. Penalties for Gross Misdemeanors	CP Purves discussed changes in the penalties for Gross Misdemeanors; wording changing from "365 days" in jail to "up to 364"
7.	Adjourn. Next meeting November 18, 2015	Adjourned at 16:59

Police Department

All Rates Listed are "Not to Exceed" Fees

PMC Reference (unless otherwise stated)	Title	2014 Rate/Fee/Charge
3.12.040(B)	Notary Fees	First document \$10.00 Each additional document \$5.00
	Traffic Accident Reports (State Form)	\$9.00
	Case Reports (Police Dept) First Page	\$5.00
	Each additional page	-.25
	Fingerprints Per Card	\$10.00
	Non-Resident (Per Card)	\$15.00
	Annual Report (Police)	\$15.00
	Background Checks (Police Dept)	\$15.00
	Criminal History Check	\$15.00
9.12.055(B)	Alarm Registration	\$10.00
	1 st Alarm (If 1 st in a 6 mo. Period)	\$ 0.00
	2 nd and subsequent Alarms (the 2 nd in a 6 mo. Period)	\$50.00 25.00
	3 rd Alarm (the 3 rd & ea. After in a 6 mo. Period)	\$50.00
	Service of Papers	\$30.00
	NSF Check Charge	\$40.00
	CPL-Original (City 18.00, FBI 16.50, State \$18.00)	\$52.00
	CPL-Renewal (City \$14.00. State \$18.00)	\$32.00
	CPL-Late Renewal (City \$21.00, State \$21.00)	\$42.00
	CPL-Replacement (City \$10.00)	\$10.00
	Laminating (Card size)	\$ 5.00
3.12.040(O)		
Resolution 2010-21 (Clerks)	Collection Costs	
Resolution 2010-21 (Clerks)	Copies (including scanning to an electronic format) – 10 copies	No charge
Resolution 2010-21 (Clerks)	Copies (including scanning to an electronic format) – 11 copies	\$1.65
Resolution 2010-21 (Clerks)	Copies (including scanning to an electronic format) – 12 or more copies	\$0.15 per page
Resolution 2010-21 (Clerks)	11" x 17" 5 copies	No charge
Resolution 2010-21 (Clerks)	11" x 17" 6 or more copies	\$0.30 per page

Executive Summary

Blazina and Ferguson

This effort began after the Supreme Court's March 12, 2015 ruling in *State v. Blazina*¹ as an attempt to create a bench card to assist Kitsap District Court judges *pro tempore* at sentencing hearings concerning the imposition of legal financial obligations. It quickly became clear that a more thorough analysis was necessary given the myriad of statutes creating sentencing LFOs. Within those LFO statutes, the legislature has used varying language creating mandatory and discretionary LFOs, along with statutory language concerning a defendant's indigency and ability to pay. This primer is the result of months of analysis and discussion among the Kitsap District Court bench.

The *Blazina* Court questioned the passive role of Washington trial courts at sentencing when imposing prosecution-requested monetary penalties on defendants. The Court discussed national and Washington organizations which have chronicled many problems associated with the imposition of LFOs on indigent defendants. *Blazina* cited to studies finding racial, geographic, and gender disproportionality in the assessment of LFOs, especially when assessed against the poor.

Additionally, the Department of Justice's Ferguson Police Department report includes a scathing discussion of that city's, police department's, and municipal court's excessive focus on revenue generation. Concerning the court's role, the report says—

Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety.

* * *

Together, these court practices exacerbate the harm of Ferguson's unconstitutional police practices. They impose a particular hardship upon Ferguson's most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver's license, employment, or housing.²

¹ *State v. Blazina*, 182 Wn.2d 827 (2015).

² United States Department of Justice Civil Rights Division, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (Mar. 4, 2015), at 3-4.

Imposition of LFOs Before *Blazina* and Ferguson

Prior to *Blazina* and similar to many Washington trial courts at the time, the Kitsap District Court took a neutral and detached role at sentencing when the prosecution sought the imposition of fines, costs, fees, assessments, or penalties.³ Both parties were allowed to address the court and advocate for a particular sentencing result. Frequently, the prosecution noted that the sentencing recommendation was a joint prosecution/defense recommendation in all aspects. The defense rarely addressed LFOs, instead focusing on jail time, jail alternatives and treatment. The Court listened to the parties and asked whether the defendant wanted to say anything before sentence. The Court rarely inquired of the parties prior to imposing a sentence, instead relying on the sentencing record the parties chose to make.

Given the lack of defense comment on the prosecution-requested LFOs, the Court routinely granted the prosecution's LFO requests and ordered defendants to pay them. Pay plans were offered when requested.

If a defendant failed to pay an LFO, this Court long ago decided to not impose jail time as a consequence of a defendant's failure to pay despite its power to do so. Rather than setting a court hearing for the possible imposition of jail upon a finding of willful nonpayment, the court instead turned the unpaid LFOs over to a collection agency. The agency attempted to collect the LFOs, and if unsuccessful would file a civil lawsuit and utilize civil remedies for debt collection.

Washington's Statutory Scheme Generally Places the Burden on the Prosecution to Produce Evidence a Defendant is Not Indigent and Has the Ability to Pay Non-Mandatory LFOs

Blazina and the Ferguson report have caused this Court to completely rethink its approach and role at sentencing concerning the imposition of LFOs. Most Washington LFO statutes discussed herein exhibit a clear intent by the legislature to have sentencing courts impose LFOs only when a defendant is not indigent and has the present or future ability to pay them. A few LFO statutes are mandatory in the sense that the legislature has chosen to require a sentencing court to impose the LFO despite a defendant's indigency status and inability to pay the LFO.

Blazina instructs that a sentencing court in non-mandatory LFO situations must *sua sponte* take an active role in asking the parties whether they want to make a record concerning a defendant's indigency status and ability to pay an LFO before sentencing a defendant to pay the LFO. Yet, the court of course must remain neutral and detached at all times.

³ The *Blazina* Court included all these different statutory sentencing terms in the phrase "legal financial obligations." *Blazina*, 165 Wn.2d at ¶1.

A sentencing hearing is a critical stage of a criminal prosecution. A defendant has the right to address the judge before sentencing, but the defendant also has the right to say nothing because a defendant retains his or her constitutional right to remain silent at a sentencing hearing.

While defense counsel is always given the opportunity to address the court prior to the imposition of a sentence, counsel may not disclose his or her client's confidential financial information obtained from the client absent the client's express waiver of the confidentiality of that attorney-client communication. Neither the prosecution nor a sentencing court can compel a defendant or defense counsel to make a record concerning the defendant's indigency status and ability to pay LFOs.

Additionally, the prosecution or court may not rely on a defendant's financial information obtained during the defendant's screening for court-appointed counsel because that information is confidential and is not available to the prosecution.⁴

For these reasons, the Kitsap District Court declines to follow the Washington State Supreme Court Minority and Justice Commission LFO Reference Guide (August 2014) wherein it proposes several questions a sentencing court should ask of the defendant or defense counsel in an effort to determine a defendant's ability to pay prior to imposition of an LFO at sentencing. A court loses its neutral and detached constitutional mandate when it compels the defense to make a record to assist the prosecution in its request for the imposition of an LFO.

The question ultimately comes down to which party has the statutory burden to produce evidence at sentencing about a defendant's indigency status and ability to pay in those situations when the legislature has not required a court to impose an LFO.

Washington's LFO statutes do not generally specify which party has the burden to produce evidence of indigency status or ability to pay. Two statutes require a defendant to present a "verified petition" before a court is empowered to suspend payment of the LFO upon a finding the defendant "does not have the ability to pay the fee."⁵ The remaining LFO statutes pertinent to courts of limited jurisdiction lack the "verified petition" requirement.

Several principles assist a court when interpreting an LFO statute. The common law did not authorize the imposition of monetary penalties against an offender. LFO statutes are thus in derogation of common law. Penal statutes in derogation of the common law must be strictly construed.

The two "verified petition" statutes clearly place the burden on the defense to present evidence of a defendant's inability to pay before the court is statutorily authorized to suspend the LFO. The legislature's decision to not require the defendant to submit a "verified petition" in the remaining non-mandatory LFO statutes exhibits a similar legislative intent to not place the burden of producing ability to pay evidence on the defense.

⁴ RCW 10.101.020(3) ("The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.").

⁵ See RCW 43.43.690 (\$100 per count crime laboratory fee) and RCW 46.61.5054 (\$200 toxicology laboratory fee).

When coupled with the requirement to strictly construe LFO statutes, the only logical conclusion to draw is that the prosecution has the burden of proving a defendant is not indigent and has the ability to pay an LFO when a statute mentions indigency and ability to pay and is silent about a defense obligation to present inability to pay evidence to the court. Although the prosecution has a low burden concerning a defendant's indigency status and ability to pay LFOs, the burden is nonetheless on the prosecution when the LFO statute mentions indigency or ability to pay and the statute is silent about which party has the burden to produce evidence concerning a defendant's ability or inability to pay the requested LFO.

Community Restitution in Lieu of LFO Payment is Generally Not Statutorily Authorized

Our legislature has authorized community restitution in lieu of legal financial obligations in several situations, including traffic infractions, the Sentencing Reform Act, and Juvenile Justice Act.

RCW 46.64.055(1) also authorizes its \$102.50 criminal justice penalty to be converted to community restitution. No other statute, however, authorizes a court of limited jurisdiction to convert an LFO imposed at sentencing to community service.

The legislature's decision to authorize community restitution in some situations but not others is instructive of legislative intent. As previously noted, LFO statutes must be strictly construed. Absent statutory language authorizing LFOs to be converted to community restitution, the court simply lacks the power to do so even if the defendant makes such a request.

An LFO Primer

This document includes all known court of limited jurisdiction LFO statutes. Each statute is analyzed concerning whether it is mandatory or discretionary, and whether statutory language authorizes a sentencing court to deny imposition of an LFO based upon a defendant's indigency or inability to pay.

Bench cards are in the Appendix outlining the proper colloquy the court should conduct, the factors to be considered concerning indigency and ability to pay, and a listing of all LFOs in chart form for ease of analysis.

The Appendix also includes updated versions of the court's three Judgment and Sentence forms. The first Judgment and Sentence form⁶ is used when no probation is ordered. The second Judgment and Sentence form⁷ is used when probation is ordered, and the conviction offenses do

⁶ This form is known as the "short form."

⁷ This form is known as the "long form."

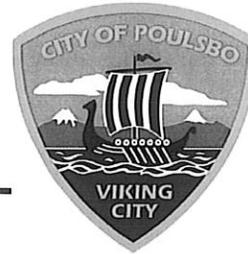
not include DUI or domestic violence. The third Judgment and Sentence form⁸ is used when a conviction offense involves DUI or domestic violence.

It is very likely this document, the bench cards and/or the Judgment and Sentence forms will be updated in a few months as parties and other courts examining the LFO issue present additional information not considered herein.

Litigation is not precluded. The Kitsap District Court presents this primer to our judges *pro tempore* to assist them in making rulings in the complex area known as legal financial obligations.

⁸ This form is known as the "DUI or DV form."

City of Poulsbo



To: Public Safety/Legal Committee

From: Kylie Purves, City Prosecutor

Date: October 20, 2015

Subject: Animal Control – additions to Poulsbo Municipal Code

The Kitsap Humane Society has made the following recommendations for additions to the Poulsbo Municipal Code. The additions will be consistent with other jurisdictions within the county and improve enforcement of laws protecting animals.

6.02.095 Confinement of an animal in a wheeled vehicle

No person shall confine any pet or livestock in a wheeled vehicle in such a manner that places the animal in a life- or health-threatening situation by exposure to a prolonged period of heat or cold, without proper ventilation or other protection from such heat or cold. In order to protect the health and safety of such animal, an animal control authority employee or law enforcement officer who has probable cause to believe that this section is being violated shall have the authority to enter such vehicle to remove such animal by any reasonable means under the circumstances after making a reasonable effort to locate the owner. No law enforcement officer or animal control authority employee shall be held liable for any damage to property resulting from actions taken under this section or pursuant to Chapter 16.52 RCW. Injurious confinement of a pet animal is a misdemeanor. In the absence of injury to an animal, any violation of this section is a civil infraction.

6.02.145 Failure to provide adequate care

It is unlawful for an owner of a pet or livestock to fail to: a) provide adequate food or water; b) provide adequate shelter, c) provide appropriate habitat and medical care; or d) maintain facilities housing pets in a healthful, sanitary, and safe manner. A violation of this section is a civil infraction.

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, AMENDING CHAPTER 8.20 OF THE POULSBO MUNICIPAL CODE IN ORDER TO ADD A CHAPTER WHICH ALLOWS THE FIRE DEPARTMENT TO PROHIBIT THE DISCHARGE OF FIREWORKS DURING PERIODS OF EXTREME FIRE DANGER; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Poulsbo is concerned about the hazard fireworks pose during dry weather; and

WHEREAS, the City of Poulsbo desires to grant the fire marshal or the fire marshal's designee the ability to ban the discharge of fireworks during times when discharge would pose an unusually dangerous risk to people and property within the City of Poulsbo, NOW, THEREFORE,

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

Section 1. Chapter 8.20.275 of the Poulsbo Municipal Code is hereby added and shall read:

During periods of extreme fire danger, the fire marshal or the fire marshal's designee may prohibit the discharge of all fireworks within the city limits.

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

Section 3. **Effective Date.** Pursuant to RCW 70.77.250(4) this ordinance shall take effect one year after adoption and publication of the attached summary, which is hereby approved.

APPROVED:

MAYOR, REBECCA ERICKSON

ATTEST/AUTHENTICATED:

CITY CLERK, NICOLE STEPHENS

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
JAMES E. HANEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. 2015-_____

SUMMARY OF ORDINANCE NO. 2015-____
of the City of Poulsbo, Washington

On the ____ day of _____, 2015, the City Council of the City of Poulsbo, passed Ordinance No. 2015-____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, AMENDING CHAPTER 8.20 OF THE POULSBO MUNICIPAL CODE IN ORDER TO ADD A CHAPTER WHICH ALLOWS THE FIRE DEPARTMENT TO PROHIBIT THE DISCHARGE OF FIREWORKS DURING PERIODS OF EXTREME FIRE DANGER; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

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

DATED this ____ day of _____, 2015.

CITY CLERK, NICOLE STEPHENS