



PLANNING COMMISSION

AGENDA

October 22, 2013

ROLL CALL: FAKKEMA_____ WASINGER_____

 JENSEN_____ PETERSON_____

 FIKSE_____ FREEMAN_____

 SCHLECHT_____

1. *Page 3*
Approval of Minutes – September 24, 2013
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.
- 3.
3. *Page 21*
MARIJUANA RELATED USES – CODE AMENDMENT PROJECT – Public Meeting
Staff will brief the Planning Commission on the need to revise the Municipal Code in response to State law changes pertaining to marijuana related uses. Preliminary research on this topic will also be presented to the Commission.
4. *Page 37*
2016 COMPREHENSIVE PLAN UPDATE – Public Meeting
Staff will update the Planning Commission on the continuing work and effort with the 2016 Comprehensive Plan Update. Staff will present the scope of work that will be required to update the City's development regulations. Staff will also share a draft public participation plan for the 2016 update. An update may also be provided on staff's coordination with Island County and the work that's related to the County Wide Planning Policies.

MINUTES

September 24, 2013

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
September 24, 2013**

ROLL CALL: Present: Keith Fakkema, Kristi Jensen, David Fikse, Bruce Freeman and Sandi Peterson
Absent: Greg Wasinger and Ana Schlecht
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

Chairman Fakkema called the meeting to order at 7:30 p.m.

MINUTES: MS. PETERSON MOVED, MR. FIKSE SECONDED, MOTION CARRIED TO APPROVE THE AUGUST 27, 2013 MINUTES AS PRESENTED.

PUBLIC COMMENT:

Bob Wall (1537 SE 8th Avenue) spoke as a member of the Oak Harbor Sister City Committee and was interested in the Economic Development Strategy as the Sister City Committee has an interest in economic development and cultural exchange.

DIGITAL SIGNS CODE UPDATE – Public Hearing

Mr. Spoo displayed a Power Point presentation (Attachment 1) which provided a recap of what prompted the sign code update as well as draft code changes to require signs to be turned off within 100 feet of sensitive land uses from 11:00 p.m. – 6:00 a.m., changing the minimum duration for graphics, images and text to 2 seconds and presented three options for regulating brightness (see table below).

	Option A	Option B	Option C
Brightness Level	1,000 nits (night)/8,000 nits (day) for C1, I, PIP, PBP & PF . 1,500 nits (night)/13,000 nits (day) for C3, C4, C5 . With autodim	0.3 foot-candles above ambient with autodim	0.3 FC above ambient for C1 and PF . 0.8 above ambient for C3, C4, C5, I, PIP, PBP . With autodim.
Standard Type	Absolute – does not take into account ambient	Relative – takes into account ambient	Relative – takes into account ambient light
Measurement Occurrence	Day & night	Night	Night

Mr. Fakkema opened the public hearing.

Richard Everett (651 SE Bayshore Drive) spoke about the dark-sky movement, a campaign by people who want to reduce light pollution. He asked that light pollution be considered with respect to signs and offered to provide more information on the dark-sky movement.

Aaron Syring (32170 SR20) expressed concern about the hours of operation requirement on page 38 of the Planning Commission packet. Since his business is located near an apartment complex, Mr. Syring asked that the 100 foot distance from residentially zoned property language be change to say 100 feet from residential structures rather than the property line. Mr. Syring also stated that his preference was Option A.

Seeing no further comments, the public hearing was closed.

Mr. Powers addressed Mr. Syring's concern about the residentially zoned property language. Mr. Powers explained that Mr. Syring's business and the apartment complex is located in the Residential/Office zone and is considered a commercial district.

Planning Commission Discussion

Mr. Fikse believed that Option A was the simplest and easiest option for managing the brightness levels and enforcement since the LED signs can be set to a certain nits level. He believed Options B and C would open another level of enforcement against businesses in Oak Harbor. He also raised the scenario in which a non-LED sign was actually brighter than an LED sign. Brightness level enforcement on LED signs and not the other type of sign could lead to litigation.

Mr. Powers noted that enforcement is complaint driven and staff doesn't see a different level of enforcement with Option B and C but they do have different methodologies for measurement. Staff's original hesitancy for Option A was the cost of the nits gun to do the nits measurement. Regarding the non-LED signs, the community hasn't chosen to set limits on them and Mr. Powers said that he wouldn't propose that we should. Initially the Planning Commission was worried about brightness and the impact on residential/open space areas which is how we got on the issue of brightness. Staff's goal is to have a code which is simple for the user and simple for the staff.

Mr. Freeman indicated that he tended to believe the experts and what the industry is doing nation-wide. Based on what the experts say he preferred Option C which is based on the industry standard.

Ms. Peterson said she looked at the date of the information that was provided by the experts and it was two year old information on technology that is quickly advancing. She stated that the ordinance needs to be clear, concise, easy to understand, business friendly and easy for enforcement.

MOTION: MS. PETERSON MOVED, MR. FIKSE SECONDED RECOMMENDING OPTION A TO THE CITY COUNCIL.

Discussion

Mr. Fikse said his second choice was Option C. Originally, .3 foot-candles was brought forth as a recommendation from the International Sign Association (ISA). Mr. Fikse said he bought a foot-candle gun and tested the value and found the value to be too restrictive. More verification is needed on Option C to make sure ISA got it right, we don't know what ISA's information is and from when it was etc. He stated he believed Option A is the easiest.

VOTE ON:

THE MOTION: MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED TO RECOMMENDING OPTION A TO THE CITY COUNCIL.

ACTION: MS. PETERSON MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE DRAFT ELECTRONIC MESSAGE CENTER SIGN CODE. MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED.

AMENDMENTS TO OHMC 5.22 – NIGHTCLUBS – Public Hearing

Mr. Kamak displayed a Power Point presentation (Attachment 2) which reviewed previous discussions with the Planning Commission, options considered during the 2012 discussion which included licensing nightclubs by occupancy limit in the various zoning districts and the occupancy limits recommended by Planning Commission. Mr. Kamak concluded his presentation by recommending that the Planning Commission hold a public hearing and make a recommendation to the City Council.

Mr. Fakkema opened the public hearing.

Kathy Harbour (Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for immediate approval.

Bill Christens (651 SE Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for approval.

Billie Cook (651 SE Bayshore Drive) read her comments (Attachment 3).

Deana Royal (920 SE Pioneer Way) stated that she is a Pioneer Way business owner directly between Oak Harbor Tavern and Off the Hook. She spoke in favor of recommending approval to the City Council. She also stated that she would like to see a moratorium on future nightclub licenses in the Central Business District (CBD) due to vandalism and fights. The behavior is not conducive for families in the evening and nightclubs should be more restrictive in the CBD.

Richard Everett (651 SE Bayshore Drive) spoke in favor of recommending approval to the City Council and suggested a modification to delete the term “other similar health and safety impacts” which is repeated throughout the ordinance and replace it with “public health or safety, noise and traffic impacts”. At a minimum delete the “other similar” language.

Seeing no further public comment the public hearing was closed.

Mr. Freeman commented that large businesses can be run with minimal impact to their neighbors and that it has always been his feeling that it is a management issue.

ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE AMENDMENTS TO THE NIGHTCLUB ORDINANCE. MOTION CARRIED.

ECONOMIC DEVELOPMENT STRATEGY – Public Hearing

Mr. Spoo displayed a Power Point Presentation (Attachment 4) which addressed questions and comments from the Planning Commission at the August 27th meeting which included the make-

up of the Economic Development Committee, the Needs Assessment Report regarding income and tourism. Mr. Spoo concluded his presentation by recommending that Planning Commission forward the Economic Development Strategy to the City Council with a recommendation to approve or discuss what needs to be changed or make motions on what needs to be changed and forward a recommendation.

Mr. Fakkema opened the public hearing.

Bob Wall (1537 SE 8th Avenue) suggested offering tax breaks for a number of years to attract businesses. He also asked if the moorage downtown will be looked at. He restated that he is on the Sister City Committee which is looking for a sister city of similar size to Oak Harbor for cultural exchange and economic development.

Seeing no further public comment the public hearing was closed.

Mr. Spoo responded to Mr. Wall's questions.

Planning Commission Discussion

Planning Commissioners had concerns about the amount of money spent on studies and the importance of getting support from the community by explaining why a study might be necessary. Commissioners asked how the Plan would be implemented, what the game plan was and would be role of the Economic Committee going forward.

Mr. Spoo said that the Planning Commission could make a recommendation to forward only the actions that require no additional funding or staffing. Mr. Powers pointed out that not all of the dollar amounts are associated with studies. Some of the amounts are dollars that it will take to do the actual work such as updating the website.

Mr. Spoo explained that the game plan is to have staff begin implementing those actions that can be done with no additional funding and with existing staffing if Council approves the Plan. Mr. Spoo indicated that the Committee is currently discussing what their future role will be.

MOTION: MR. FREEMAN MOVED, MS. JENSEN SECONDED A MOTION TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE ECONOMIC DEVELOPMENT STRATEGY.

Mr. Spoo asked the Planning Commission to include in the motion, to allow him the ability to revise the purpose, background and conclusion sections.

AMENDEND MOTION: MR. FREEMAN MOVED, MS. JENSEN SECONDED A MOTION TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE ECONOMIC DEVELOPMENT STRATEGY AND TO ALLOW STAFF TO REVISE THE PURPOSE, BACKGROUND AND CONCLUSIONS SECTIONS. MOTION CARRIED.

MOTION: MS. JENSEN MOVED, MS. PETERSON SECONDED A MOTION TO RECOMMEND THAT THE ECONOMIC DEVELOPMENT COMMITTEE CONTINUE SERVING DURING THE IMPLEMENTATION OF THE ECONOMIC DEVELOPMENT STRATEGY. MOTION CARRIED.

2016 COMPREHENSIVE PLAN UPDATE – Public Meeting

Mr. Kamak displayed a Power Point presentation (ATTACHMENT 5) which presented a review of the Department of Commerce checklist that cities use to determine if their current comprehensive plan meets the requirements of the Growth Management Act (GMA). Mr. Kamak also reviewed potential updates that need to be done for each of the elements in our Comprehensive Plan which are detailed in the staff report and summarized in the Power Point presentation.

ADJOURN: 9:30 p.m.

DRAFT



|| Purpose

- Back to the Beginning
- Brightness
- Hours of Operation
- Minimum duration
- Recommendation

|| Back to the Beginning

- Why are we talking about electronic message centers?
 - Economic development committee: outdated code, flexibility for businesses, sales tax leakage
 - The public interest
- What is the public interest?
 - Shared interest.
 - Public health, safety, and welfare
 - Practical level:
 1. Nuisance (prevent harm)



|| Back to the Beginning cont...

2. OR something we want to achieve:
 - More jobs
 - Neighborhood character
 - Efficient use of public resources
 - All of the above and more
 - See Oak Harbor Comprehensive Plan

- What does this have to do with electronic message centers?
 - Comprehensive Plan says what we want to achieve...(attachment 6)



Review of Brightness Discussions

	Option A	Option B	Option C
Brightness Level	1,000 nits (night)/8,000 nits (day) for C1, I, PIP, PBP & PF. 1,500 nits (night)/13,000 nits (day) for C3, C4, C5. With autodim	0.3 footcandles above ambient with autodim	0.3 FC above ambient for C1 and PF. 0.8 above ambient for C3, C4, C5, I, PIP, PBP. With autodim.
Standard Type	Absolute – does not take into account ambient	Relative – takes into account ambient	Relative – takes into account ambient light
Measurement Occurrence	Day & night	Night	Night

Option A - Background

- Standard: 1,000 nits (night)/8,000 nits (day) – 1,500 nits (night)/13,000 nits (day).
- Initially: 500 nits (night)/5,000 nits day – PC felt too restrictive
- Different standards based on intensity of zone: C1, I, PIP, PBP, PF more restrictive. C3, C4, C5 less restrictive.
- Based in part on “cut sheets” (manufacturer’s specs) which show brightness capabilities of signs and PC comment.

Option B - Background



- Standard: 0.3 Footcandles above ambient
- Visit from James Carpenter, International Sign Association
- Based on document “Recommended Night-time Brightness Levels for On-premise Electronic Message Centers.”
 - Based on research of Dr. Ian Lewin, as well as IES document “Light Trespass: Research, Results and Recommendation” by Illuminating Engineering Society (IES).

Option C - Background

- Standard: 0.3 – 0.8 Footcandles above ambient, depending on zone
- Discussion with Jeff Robbins, Lighting Design Lab - Seattle
 - ISA publication is “excellent” and “would lean heavily on the ISA document” (attach 4).
- Discussion with Dr. Ian Lewin whose research informed ISA.
 - ISA recommended conservative standard for simplicity and after field testing “in areas of both low and high ambient light.”
 - Lewin research (attach 5) recommended standards up to 0.8 FC in areas of moderately high ambient electric light

|| Option C - Background

- Planning Commission comments July – recommended using o.8 FC as some other jurisdictions have done.
- Option C is consistent with research and recent PC comments



|| Hours of Operation

- Changed to require signs to be turned off within 100 feet of sensitive land uses from 11:00 p.m. – 6:00 a.m.
- Consistent with public comment



|| Minimum duration of graphics, images, text

- Changed to be 2 seconds
- Consistent with public comment



|| Recommendation

- Conclude public hearing
- Select option for brightness standard and measurement (A, B, or C)
- Make a recommendation to the City Council to approve the draft electronic message center (EMC) sign code.

Request to restrict by size and zoning

Nightclubs

Nightclubs

- Regulated in Title 5 - Business Licenses and Regulation
- Defined - "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises

Nightclubs

- Nightclubs are specifically not listed as a use in Title 19 – Zoning
- Any permitted or conditional use can apply for a Nightclub license
- Nightclub License review process – Lead by the Chief of Police with a Public Hearing at the City Council
- License review is not a Land use review

Nightclubs

- Initially six uses had Nightclub licenses – currently four
 - ~~Element – CBD (Central Business District)~~
 - ~~Seven West – CBD (Central Business District)~~
 - Off the Hook – CBD (Central Business District)
 - Oak Harbor Tavern – CBD (Central Business District)
 - Mi Pueblo – CBD (Central Business District)
 - El Cazador – C5, Highway Corridor Commercial
- These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts
- Some of these uses can continue to exist without a Nightclub License

Nightclubs

- Public Input on April 24 at Planning Commission
 - New code may not change the operations of current nightclubs
 - Small scale nightclubs don't seem to be an impact
 - All complaints were related to Element nightclub
 - Noise created by large groups, loud cars, trespassing, lack of respect and poor business practices
 - Perceived lack of owner's cooperation, neighborliness and initiative
 - Preference for restricting nightclubs specifically as opposed to general uses

Nightclubs

- Nexus
 - Scale of nightclub has direct relation to the negative impacts on adjacent properties
- Options considered at the June 26th meeting
 - Regulate nightclubs as a land use
 - Licensing uses by area (sq. ft.)
 - Licensing by occupancy limit ✓

Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
 - Determine the districts where they should be prohibited
 - Primarily Residential– R1, R2, R3, R4
 - Mixed - RO, C1
 - Commercial – C4, Highway Service Commercial
 - Public – PF

Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
 - Regulate the zoning districts based on the intent of the zoning district
 - CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
 - C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
 - C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
 - PIP, PBP – Planned Developments, no residential (less or no restrictions)
 - I1, - Industrial, no residential (less or no restrictions)

Nightclubs

- So what should the occupancy limit be in the various zoning districts?
 - Occupancy limits of previous and existing nightclub license holders
 - El Cazador – 291 – no impacts reported
 - Oak Harbor Tavern – 108 – min impacts
 - Mi Pueblo – 280 – less impacts
 - 7 West – 165 – min impacts
 - Off the Hook – 201 – min impacts
 - Elements – 580 +219 (covered area) – most impacts

Nightclubs

- Occupancy limits suggested by Planning Commission

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	300
C3, Community Commercial	300 or 30% increase to 400	300
C5, Highway Corridor Commercial	300 or ± 60% increase to 500	400
PBP, PIP	300 or ± 60% increase to 500 or No limitations	No limitations
I1, Industrial	300 or ± 60% increase to 500 or No limitations	No limitations

■ Non of the existing licenses will become non-conforming with the currently suggested occupancy limit

Nightclubs

- Formal adoption process
 - Public Hearing at the Planning Commission
 - Public Hearing at the City Council
 - Action by City Council

I hope you will approve this agenda item and send it to the city council for further action.

I believe the city needs to take this proactive approach to locating large nightclubs in the city limits.

Why bother, when there are no large nightclubs presently licensed in the city. Well just like the expansion in size occurring in many businesses—Big K mart, Super Wal Mart, Cosco, Home Depot, entrepreneurs find bigger is often better in the Entertainment Industry too. Facilities with a large capacity of patrons, large size in square feet, many options under one roof, Bar, Nightclub, Billiards, Pool, live music, Dancing, Sports bar, stage shows, Gaming, card rooms, Karaoke—One stop shopping. Las Vegas discovered this years ago, and so have the Indian Casinos, even in a small town like Oak Harbor ^{consolidation} makes sense.

Large Mega Clubs are both Profitable and Popular. Especially popular with young people. Our Population has a large 19-29 years old component now, and that's slated to grow as more Navy personnel arrive. Therefore Oak Harbor will, I feel, have more applications for this type of business.

This agenda item is not designed to discourage these clubs but rather give guidelines to the business owners and help them avoid the pit falls that can occur when a business finds itself in unexpected conflict with other land users. By the city concerning itself with the locating of large nightclubs it will move to protect residential users, and other businesses as well as churches or youth organizations from adverse effects, due to close proximity to these large businesses, as well as protect the nightclub business from surprise and stress. By encouraging and thoughtfully siteting such clubs, patrons are able to remain in the city and not need to drive long distances to have entertainment they enjoy. Navy personnel frequenting a club in the PIP, PBP, or I zone remain close to home so to speak, I think the Navy would like that, especially if their personnel have a bit too much to drink, as a taxi is affordable and easy to obtain there, rather than being off island where they might elect to drive, dangerous, or be stuck.

I feel this is a very well prepared and thought out amending of the night club ordinance. It is not surprising that the ordinance, which was adopted in 2009, might need some modification now, based on the experience of the past few years. I urge you to approve it.

Thank you for holding this public hearing. Thank you also to the planning department staff, especially CAC who has done an outstanding job on this project.

DRAFT ECONOMIC DEVELOPMENT STRATEGY & ACTION PLAN

Planning Commission: September 24, 2013

Purpose

- Address issues from last month
 - EDC membership
 - Income
 - Tourism



ISSUES FROM LAST MONTH

Income

•OH's lower than average income.

	2000	2010	% Change
Danbridge Island	\$ 83,415	\$ 96,130	15%
Canas	\$ 64,886	\$ 77,967	20%
Des Moines	\$ 57,003	\$ 60,762	7%
Kemrono	\$ 72,130	\$ 81,097	12%
Lake Stevens	\$ 69,250	\$ 73,128	7%
Maple Valley	\$ 70,008	\$ 86,284	40%
Mercer Island	\$ 110,830	\$ 123,328	11%
Moose Lake	\$ 42,096	\$ 47,535	13%
Mountlake Terrace	\$ 52,117	\$ 58,018	11%
Mukilteo	\$ 78,487	\$ 83,120	7%
Oak Harbor	\$ 41,529	\$ 50,372	21%
SeaTac	\$ 47,630	\$ 48,319	1%
Average for King County Cities	\$ 71,522	\$ 82,354	15%
Average for Cities Outside King County	\$ 61,650	\$ 70,898	15%
Average for All Cities	\$ 65,767	\$ 75,670	15%

Source: American Community Survey

Wage Level	Oak Harbor		Island County		Washington	
	2002	2010	2002	2010	2002	2010
\$1,250 per month or less	44.5%	37.8%	40.6%	32.3%	28.6%	23.2%
\$1,251 to \$3,333 per month	40.5%	39.8%	41.3%	37.5%	39.8%	33.9%
\$3,333 per month and up	15.0%	22.3%	18.1%	30.2%	31.6%	42.9%

Source: Quarterly Census of Employment and Wages

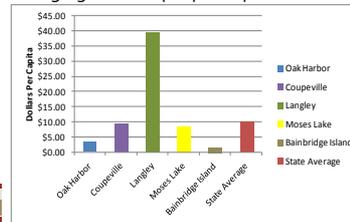
Income

•Best information indicates income figure probably does not include Navy allowances for housing, subsistence, cost of living, clothing, separation.

•In either case, tells us how what perceptions are from the outside

Tourism

•Lodging tax receipts per capita.

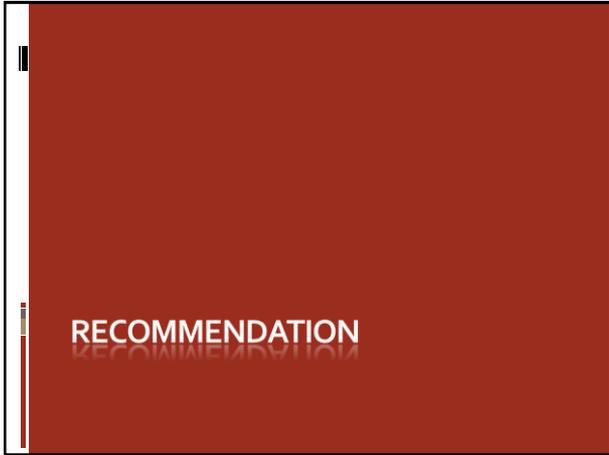


- True that tourism jobs tend to be low-paying
- Danger in being overly tourist-oriented
- Oak Harbor seems to be underperforming in the tourism industry

CHANGES TO DOCUMENT

Changes to document

- None. List of topics discussed:
 - Tourism
 - Moorage near downtown
 - Amphitheater
 - Language referencing additional studies



|| Recommendation

- Forward to City Council with recommendation to approve

or

- Discussion of what needs to change

or

- Make motions of what needs to change and forward recommendation

|| Questions/Comments?

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2016 Update

 Scope of amendments to the
 Comprehensive Plan

Checklist

I. Required Comprehensive Plan Elements and Components

1. A Land Use Element that is consistent with countywide planning policies (CMPPs) and RCW 36.70A.070(5).		
a. A future land use map showing city limits and urban growth area (UGA) boundaries. <small>RCW 36.70A.070(2) and RCW 36.70A.110(2) WAC 365-196-400(2)(a); WAC 365-196-400(2)(b)</small>	<input type="checkbox"/> No <input type="checkbox"/> Yes (location)	<input type="checkbox"/> Yes <input type="checkbox"/> No: Further review needed
b. Consideration of urban planning approaches that increase physical activity. <small>RCW 36.70A.070(1), Amended in 2005 WAC 365-196-405 (2)(c)</small>	<input type="checkbox"/> No <input type="checkbox"/> Yes (location)	<input type="checkbox"/> Yes <input type="checkbox"/> No: Further review needed

The Harbor's Comprehensive Plan has a future land use map. Changes may need to be done to accommodate that were not approved as part of the 2005 update. There may also be amendments based on the 2015 update.

The Comprehensive Plan has strategies and policies that encourage physical activity. Urban Planning approaches are:

- Design for people
- Interconnected Streets
- Infill/Development
- Mixed Use centers
- Create a network
- Amenities for pedestrians
- Safe routes

These approaches are addressed

- ### Updates
- Land Use Element
 - Update the Future Land Use map to reflect the approved UGA boundaries. These will reflect the County's decision on the 2005 UGA expansions. The City's work with the County may lead to other potential amendments if deemed necessary for the 2016 update.
 - Demographics and population statistics need to be updated. The population projection must be consistent throughout the Plan, so other elements such as Housing may need to be updated to reflect the most recent projections.
 - Population densities and building intensities – acreage of each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how it meets the twenty year population projection
 - Research on the latest Best Available Science (BAS) needs to be done to determine if the current regulations on critical areas need to be updated.

- ### Updates
- Housing Element
 - Update the statistics on housing that includes an inventory and analysis of existing and projected housing needs for the 20 year population projection.
 - Identify sufficient land for housing – government assisted housing, housing for low income families, manufactured housing, group homes, and foster care facilities. – Inclusion in the zoning districts
 - Adequate provisions for existing and projected housing needs for all economic segments –
 - Policy regarding regulations of manufactured homes may need to be revised

Updates

- Capital Facilities Plan
 - Projects need to be identified for impact fees allocation. This can be done by identifying projects that are growth and non-growth related.

Updates

- Transportation Plan
 - The Transportation Plan was adopted in 2007 and was intended to be a six year plan to identify improvements. However, it was also a long term plan with forecasts to 2035. The Plan needs to be updated. The Transportation Plan, in goals and policies, meets most requirements needed for the update, however, LOS analysis, financing plan, etc need to be updated.
 - Since land use and transportation are closely linked, an update to the transportation plan could consider various land use scenarios and assessments in the long term planning for improvements and level of service.

Updates

- Consistency
 - Consistency is a primary goal for the County Wide Planning Policies (CWPP). The city is working with the county to maintain consistency in policies that impact both jurisdictions.

Updates

- Development Regulations
 - Similar checklist
 - Next Planning Commission meeting

Marijuana Related Uses
Code Amendment Project

Public Meeting

City of Oak Harbor Planning Commission Report

Date: October 22, 2013
Subject: Marijuana Related Uses – Code
Amendment Project

FROM: Steve Powers, Development Services Director

PURPOSE

This report presents information and materials pertaining to the marijuana related uses code amendment project.

BACKGROUND

The Washington State Legislature, during its 2011 Legislative Session, adopted Engrossed Second Substitute Bill 5073 (“E2SSB 5073”), which was adopted with a partial veto of the Governor, became effective July 22, 2011, and amended RCW 69.51A and renamed the Medical Use of Marijuana Act to the “Washington State Medical Use of Cannabis Act.” At this time the City of Oak Harbor does not have specific regulations addressing the facilities or uses allowed under RCW 69.51A, other than the requirement for a general business license. To respond to this situation, staff recommended the City Council impose a moratorium to preserve the status quo as necessary, until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses. The Council accepted that recommendation and on September 3, 2013 approved Ordinance No. 1666 (Attachment 1) imposing a six-month moratorium.

Initiative Measure No. 502 (I-502) was approved by Washington State votes on November 6, 2012. Its passage purported to legalize the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one and over. As in the case above, the City does not have specific regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license. Staff also recommended the City Council impose a moratorium to preserve the status quo as necessary, until the State Liquor Control Board definitively acts to establish a final and complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses. The Council accepted that recommendation and on September 3, 2013 approved Ordinance No. 1665 (Attachment 2) imposing a six month moratorium.

RCW 36.70A.390 allows cities to adopt a moratorium without first conducting a public hearing so long as one is conducted within 60 days of the adoption of the moratorium. The public hearing on both of these ordinances was held before the City Council on October 1, 2013. At the conclusion of the public hearings the Council left the moratoriums in place. With their approval

of the moratorium ordinances, the City forwarded this matter to the Planning Commission for your review and recommendation.

DISCUSSION

It is necessary for the City to draft code to regulate marijuana related uses in order to respond to the adoption of certain State laws. The ‘whereas’ statements of Ordinance Nos. 1665 and 1666 provide a summary of the topics or issues associated with Chapter 69.51A RCW (medical marijuana) and I-502 (recreational marijuana). While each piece of State legislation is unique, they both clearly authorize cities to adopt and enforce zoning requirements for these marijuana related uses. For medical marijuana the central zoning issues are the siting of collective gardens and medical marijuana dispensaries. For recreational marijuana the central zoning issues are the siting of facilities for the production, processing and retail sales of marijuana or marijuana products.

The amendments adopted to State law in 2011 for medical marijuana did not establish a State licensing scheme. However, the same is not true for I-502 passed by Washington voters in 2012. I-502 requires the Washington State Liquor Control Board (LCB) to establish the rules necessary to license the producers, processors and retailers of marijuana and marijuana related products. The LCB has determined that one (1) retail license may be issued in Oak Harbor. One of the key provisions of I-502 (from a zoning regulation standpoint) specifies that the facilities must be at least 1,000 feet from elementary and secondary schools, playgrounds, recreation centers, day cares, parks, transit centers, libraries and arcades.

Staff has prepared a preliminary map that locates all of the sensitive land uses listed above and then applies the 1,000 foot buffer to each. Areas not covered by the buffer are in theory available for the siting of the facilities authorized by State law, subject to the underlying zoning supporting such a use. Please note this map is preliminary and is only intended to facilitate a discussion with the Planning Commission. It does not represent any form of staff recommendation.

Since the moratorium ordinances may only be in effect for six months, unless extended by the City Council, staff has prepared a tentative schedule that completes this code amendment project within that timeframe. The tentative schedule is as follows:

10/22/13	Planning Commission	Background briefing and discussion
11/26/13	Planning Commission	Introduce draft code; open public hearing
12/10/13	Planning Commission	Close public hearing; make recommendation
1/22/14	City Council (workshop)	Briefing on PC work and recommendation
2/4/14	City Council	Consider draft ordinance
2/118/14	City Council	Consider draft ordinance (if necessary)

The schedule may of course be modified to fit the needs of the community, Planning Commission and City Council.

ADDITIONAL INFORMATION

A significant amount of information is available on these subjects, with more becoming available almost on a daily basis. Staff has found that two websites are particularly helpful when researching these topics: Municipal Research and Services Center of Washington (MRSC) and the Washington State Liquor Control Board. Should the Commission wish to review this information for yourself, the following links are provided for your use:

<http://www.mrsc.org/subjects/legal/MedMariReg.aspx>

<http://www.mrsc.org/subjects/legal/502/recmarijuana.aspx>

<http://liq.wa.gov/marijuana/I-502>

RECOMMENDATION

- Provide feedback to staff on the preliminary map and locations for marijuana related uses within Oak Harbor
- Accept public comment

ATTACHMENTS

1. Ordinance No. 1666
2. Ordinance No. 1665
3. Preliminary map depicting I-502 sensitive land uses and the 1,000 foot buffers

**CITY OF OAK HARBOR
OAK HARBOR, WASHINGTON**

ORDINANCE NO. 1666

AN INTERIM ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a "designated

provider” who can “provide” rather than sell marijuana to “only one patient at any one time”; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, a public hearing will be held on October 1, 2013 at 6:00 p.m. before Oak Harbor City Council;

NOW, THEREFORE, the City Council of the City of Oak Harbor, Washington, do ordain as follows:

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Oak Harbor prohibiting licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a “collective garden” as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one “qualifying patient” in any thirty (30) day period or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW , and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 3. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Oak Harbor, in accordance with the provisions of RCW 35A.82.020 and OHMC Title 19, OHMC Chapter 18.20, and/or OHMC Chapter 5.03, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

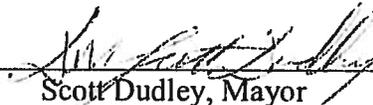
Section 4. This ordinance shall be referred to the Oak Harbor Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Oak Harbor.

Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Oak Harbor City Council, this ordinance shall automatically expire six (6) months following its adoption.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of September 2013.

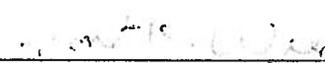
CITY OF OAK HARBOR

By: 
Scott Dudley, Mayor

ATTEST/AUTHENTICATED:

By: 
Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

By: 
Grant K. Weed, City Attorney

Date of Publication: 09/07/13

Effective Date: 09/12/13

**CITY OF OAK HARBOR
Oak Harbor, Washington**

ORDINANCE 1665

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A SIX (6) MONTH MORATORIUM WITHIN THE CITY OF OAK HARBOR ON THE ESTABLISHMENT, SITING, LOCATION, PERMITTING, LICENSING OR OPERATION OF MARIJUANA CULTIVATION, PRODUCTION OF MARIJUANA DERIVATIVES, AND THE SALE OF MARIJUANA OR MARIJUANA DERIVATIVES OR ANY OTHER ACTIVITIES ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER WASHINGTON STATE INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON AND SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ADOPTING A WORK PLAN, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Initiative Measure No. 502 (I-502), approved by the voters of Washington state on November 6, 2012, purports to legalize the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one (21) and over; and

WHEREAS, I-502 Section 1 (3) authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one (21) years of age and older, and add a new threshold for driving under the influence of marijuana; and

WHEREAS, I-502 Section 4 (1) allows the Washington State Liquor Control Board to license marijuana to process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailer;

WHEREAS, I-502 Section 4 (3) allows the Washington State Liquor Control Board to license marijuana retailers to sell usable marijuana and marijuana-infused products at retail in retail outlets; and

WHEREAS, I-502 Section 6 (7) states that before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objection to such licenses within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license; and

WHEREAS, I-502 Section 6(8) establishes certain limitations on the Washington State Liquor Control Board's issuance of licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary school or secondary school, playground, recreation

facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one (21) years or older; and

WHEREAS, I-502 Section 9 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, I-502 Section 10 contemplates that the Washington State Liquor Control Board will adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process and sell marijuana (among other things) and

WHEREAS, I-502 Section 13 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults twenty-one (21) years of age or over; and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, at this point in time, the City of Oak Harbor does not have specific regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and

WHEREAS, I-502 prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board; and

WHEREAS, the uses described in I-502 have never been allowed in any state or city in the United States, and the City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business license; and

WHEREAS, the Oak Harbor City Council hereby finds that a moratorium to preserve the status quo is necessary, until the State Liquor Control Board definitively acts to establish a final and complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt an immediate moratorium for a period of up to six months if a public hearing on the proposal is held within at least sixty days of its adoption; and

WHEREAS, the City Council desires to impose an immediate six month moratorium on the acceptance of any development permit application or business license or occupancy permit or application for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal": and

WHEREAS, RCW 35.63.200 provides a similar process as described above for adopting and extending land use moratoriums; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, the Oak Harbor Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, in conformity with the responsibilities of the City of Oak Harbor to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations to be established by the Washington State Liquor Control Board pursuant to I-502; and

WHEREAS, a moratorium will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana as authorized by I-502; and

WHEREAS, the City Council concludes that the City does have authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new land use applications or licensing or occupancy permit for the establishment of, or operation of, any facility, building or premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Oak Harbor; and

WHEREAS, in addition, the cultivation, possession or distribution of cannabis marijuana, and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act ("CSA"); and

WHEREAS, the activities purported to be legalized under Initiative Measure No. 502 remain violations of federal law through the Controlled Substances Act, and the United States Supreme Court in Gonzales v. Raich, 545 U.S. 1, (2005) which held that the CSA's categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes superseded a conflicting California State law; and

WHEREAS, two U.S. Attorneys (Federal Department of Justice) situated in Washington have gone on record stating that marijuana is a Schedule I controlled substance under federal law, and as such, growing, distributing and possessing marijuana in any capacity other than as part of a federally authorized research program is a violation of federal law, regardless of state laws permitting such activities, and also concluded publicly that local governmental employees who conducted marijuana regulatory activities under Washington State law are subject to prosecution under the CSA; and

WHEREAS, in 2012, the Board of Clark County Washington Commissioners requested a determination from the federal government whether such enforcement efforts would extend to local government activities implementing Washington state laws on marijuana, where those laws conflict with the CSA, and the responsive letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, states that anyone who knowingly carries out the marijuana activities contemplated by Washington state law which are inconsistent with the CSA, as well as anyone who facilitates such activities, or conspires to commit such violations of the CSA, is subject to criminal prosecution as provided in the CSA, including both local elected officials and local government staff; and

WHEREAS, the recently approved Initiative Measure No. 502 does not appear to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

WHEREAS, because prior to the passage of Initiative Measure No. 502, the possession or distribution of marijuana was a violation of both the Washington Uniform Controlled Substances Act and a violation of the federal CSA, the City has not studied or implemented zoning for uses involving the production or distribution of marijuana; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law to analyze impacts and potential liabilities under federal law and to determine an appropriate regulatory framework for the uses and activities that are allowed under Initiative Measure No. 502; and

WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, sale and use of marijuana products and the siting of marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, day cares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance;

NOW THEREFORE, the City Council of the City of Oak Harbor, Washington do ordain as follows:

Section 1. Preliminary Findings.

The recitals and findings set forth above are hereby adopted as the City Council preliminary findings in support of the moratorium imposed by this ordinance in compliance with RCW 36.70A.390 and RCW 35.63.200. The City Council may in its discretion adopt additional findings at the conclusion of the public hearing referenced in Section 6 below.

Section 2. Moratorium Imposed.

Pursuant to Washington State law, a moratorium is hereby enacted prohibiting within the City of Oak Harbor the establishment, siting, location, operation, licensing, or maintenance of facilities, structures, businesses or any other activities involving the production, sale and use of marijuana and marijuana products asserted to be authorized or actually authorized under Washington State Initiative No. 502 or any other laws of the state of Washington (Marijuana Business). No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses, or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive

descriptions in any license or development application during the moratorium are null and void and without legal force or effect.

Section 3. Definition of Marijuana Use.

As used in this ordinance the following list of terms shall have the meaning set forth below:

Marijuana Definitions.

"Marijuana Use" includes any store, agency, organization, dispensary, cooperative, network consultation, operation, or other business entity, group or person, no matter how described or defined, including any associated premises and equipment which has for its purpose or which is used to grow, select, measure, process, package, label, deliver, dispense, sell or otherwise transfer for consideration, or otherwise, marijuana in any form.

"Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

"Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana infused products" does not include useable marijuana.

"Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

"Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

"Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

Section 4. No Nonconforming Uses.

No use that constitutes or purports to be a Marijuana Use as that term is defined in this ordinance that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Oak Harbor Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 5. Effective Period for Moratorium.

The moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same is extended by the City as provided in State law or unless terminated sooner by ordinance.

Section 6. Public Hearing.

The City Council will hold a public hearing at the regular City Council meeting of October 1, 2013 at 6:00 p.m. or as soon thereafter as the business of the City Council shall permit and which date is no more than sixty (60) days after the date of adoption herein in order to take public testimony and to consider adopting further findings.

Section 7. Study of Issues.

The City Administrator and other responsible staff are hereby authorized to study and address issues related to determining the legality of Marijuana Uses as defined herein, including but not limited to review of the pending dispute between State and federal law enforcement authorities regarding the legality of Marijuana Uses under any circumstances and notwithstanding the adoption of Initiative Measure No. 502. In the event that such uses are ultimately determined to be legal, the work program should also develop appropriate land use regulations pursuant to the newly amended law, for review and recommendation for inclusion in the zoning regulations or other provisions of the Oak Harbor Municipal Code, including business licensing and other regulations for review for inclusion in the Oak Harbor Municipal Code.

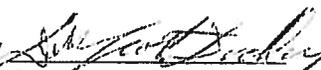
Section 8. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 9. Effective Date.

This Ordinance shall become effective five (5) days following passage and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of September 2013.

CITY OF OAK HARBOR

By 
Scott Dudley, Mayor

ATTEST:

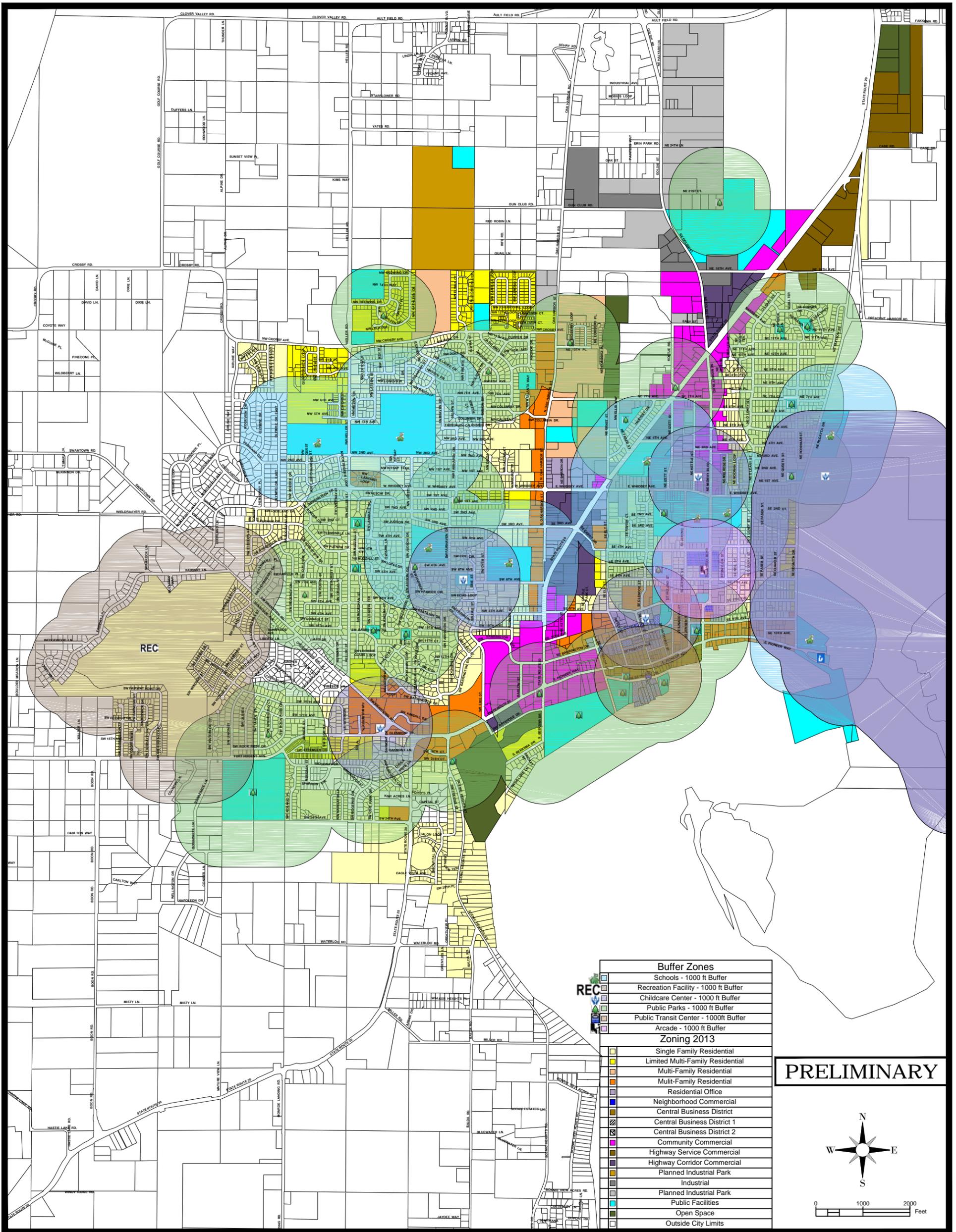
By 
Valerie J. Loffler, City Clerk

Approved as to form:

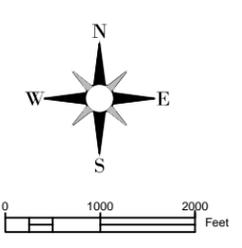
By 
Grant Weed, City Attorney

Date of Publication: 09/07/13

Effective Date: 09/12/13



PRELIMINARY



2016 Comprehensive Plan

Update

Public Meeting

CITY OF OAK HARBOR

TO: PLANNING COMMISSION
FROM: CAC KAMAK, SENIOR PLANNER
SUBJECT: 2016 COMPREHENSIVE PLAN UPDATE – COUNTY/CITY
DATE: 10/17/2013
CC: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

2016 Comprehensive Plan Update

Development Regulations checklist

The Department of Commerce has provided a checklist that cities can use to determine if the City's plans and regulations meet the requirements of the Growth Management Act (GMA) and other legislation that have been adopted in recent years. The Planning Commission reviewed the checklist for the Comprehensive Plan at its September 24, 2013 meeting. This month, Oak Harbor's Development Regulations were reviewed against this checklist. The checklist is attached to this memo and includes comments related to the requirements.

The checklist is in the same format as the one provided for the Comprehensive Plan. The checklist is formatted with four columns. Column one lists the requirements that the plan must meet. Column two indicates whether the current plan meets that requirement. Column three indicates whether an update is required or whether further research is required to determine that. Check marks have been placed to indicate whether requirements are met or need to be addressed. The last column has notes indicating locations of the regulations within the Oak Harbor's Municipal Code (OHMC) and other comments if an update is necessary to meet the requirement.

A summary of the amendments that need to be done is provided below.

- Frequently Flooded Areas: Five types of critical areas (wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas) must be addressed in the city's development regulations. The city's development regulations have language to address four of these critical areas except for Frequently Flooded Areas.
- Regulations to protect the quality and quantity of ground water used for public water supplies: Oak Harbor has a contract with Anacortes for its water supply that comes from the Skagit River. However, the city owns numerous wells within

Oak Harbor for emergency water supply. Regulations to protect the quality and quantity of this ground water need to be added to the code.

- The zoning code will need to be amended to differentiate family daycare centers from commercial day care.
- Regulations will need to be amended to add electric vehicle battery charging stations in zoning districts. This can be done by adding it to the list of uses in selective and appropriate zoning districts.
- The validity of preliminary plats was extended by HB 2152 and will need to be reflected in the City's code.
- The timeframe for expending impact fees has been extended and will therefore need to be reflected in the code.

Public Participation Plan

Section 36.70A.140 of the Revised Code of Washington requires local governments to establish and broadly communicate to the public a Public Participation Plan (PPP) which identifies procedures providing for "early and continuous public participation" in the amendment of the Comprehensive Plan and development regulations implementing such plan.

A draft Public Participation Plan (PPP) is attached to this memo for your review. The PPP identifies the Planning Commission as the primary body to consider the amendments and hold hearings. Planning Commission meetings are not only an effective way to obtain public input but it is also an effective way to disseminate information to the public because the meetings are recorded and rebroadcasted on Channel 10 public access television. Planning Commission meetings are played an average of five times a week till the next meeting is recorded and ready for broadcast. The rebroadcasting of the Planning Commission meeting is an effective way to keep transparency in the decision making process.

A dedicated webpage under the City's website has been created to provide access to all the information that is related to the 2016 update in one place. This webpage will have links to Planning Commission reports related to the update. A dedicated email address 2016update@oakharbor.org has been created for easy public input and comments.

Other means of public input such as open houses, ad hoc committees, workshops, public displays, etc. have also been identified as outreach mechanisms. The decision to use these can be made based on the topic of discussion and the most effective way to gain public input on that specific topic.

II. Required Components of Development Regulations [WAC 365-196-810](#)

<p>1. Regulations designating and protecting critical areas are required by RCW 36.70A.170, RCW 36.70A.060(2) and RCW 36.70A.172(1). <i>Note:</i> A voluntary stewardship program was created in ESHB 1886 (2011) as an alternative for protecting critical areas in areas used for agricultural activities. Counties may choose to opt into this voluntary program before January 22, 2012. Click here for the requirements of the voluntary stewardship program.</p>			
<p>a. Classification and designation of each of the five types of critical areas (<i>wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas</i>), if they are found within your city. RCW 36.70A.170; WAC 365-196-830(2) <i>Note:</i> Senate Bill 5292 adopted in 2012 clarified that certain water-based artificial features or constructs are excluded from being considered part of a fish and wildlife habitat conservation areas.</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The Comprehensive Plan includes goals and policies in the Environmental Element addressing the five types of critical areas (Pg 136-139). The Comp Plan also has maps that indicate the locations of the five types on critical areas. The OHMC has regulations for wetlands, aquifer recharge areas, fish and wildlife and geologically hazardous areas (OHMC 20.24, 20.25, 20.28 and 20.32). Frequently Flooded areas are not addressed in the OHMC.
<p>b. Findings that demonstrate Best Available Science (BAS) was included in developing policies and development regulations to protect the function and values of critical areas. In addition, findings should document special consideration given to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1); WAC 365-195, WAC 365-195</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 7 of the Environmental Element addresses the use of BAS in the process of designating and regulating critical areas (Pg 135).
<p>c. Regulations that protect the functions and values of wetlands. RCW 36.70A.060(2) and RCW 36.70A.172(1) WAC 365-190-090</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 9 of the Comp Plan addresses the protection of wetlands (Pg 136). OHMC 20.24 contains the regulations for wetlands.
<p>d. A definition of wetlands consistent with RCW 36.70A.030(21) WAC 365-190-090, WAC 173-22-035</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The definition of wetlands is consistent with the state's definition.
<p>e. Delineation of wetlands using the approved federal wetlands delineation manual and applicable regional supplements [RCW 36.70A.175, RCW 90.58.380 (1995) (2011)] WAC 173-22-035</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The comprehensive plan maps were updated in 2005. Delineations are typically done at the time of land development.
<p>f. Regulations that protect the functions and values of critical aquifer recharge areas ("areas with a critical recharging effect on aquifers used for potable water" RCW 36.70A.030(5)(b)). RCW 36.70A.060(2) and RCW 36.70A.172(1) WAC 365-190-100</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 20.32 contains regulations for critical aquifer recharge areas.
<p>g. Regulations to protect the quality and quantity of ground water used for public water supplies. RCW 36.70A.070(1)</p>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Oak Harbor uses a water supply system from the Skagit River and does not rely on ground water. The Water System Plan addresses wellhead and outlines procedures for surveying and protecting them from contamination. The OHMC does not contain any regulations to protect the wells.

<p>h. Regulations that protect the functions and values of fish and wildlife habitat conservation areas. RCW 36.70A.060(2) and RCW 36.70A.172(1) WAC 365-195-925(3), 365-190-130</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 10 in the EE addresses this requirement (Pg 137). OHMC 20.25 has regulations specifically for fish and wildlife conservation.
<p>i. Regulations that protect the functions and values of frequently flooded areas. RCW 36.70A.060(2) and RCW 36.70A.172(1) WAC 365-190-110, WAC 173-158-040</p>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 12 in the EE addresses this requirement (Pg 138). OHMC 17.20 contains regulations to prevent damage from floods.
<p>j. Definition of “fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. New in 2012. RCW 36.70A.030(5)</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The definition in OHMC 20.25.010 does not include artificial features or constructs.
<p>k. Provisions to ensure water quality and stormwater drainage regulations are consistent with applicable Land Use Element policies. RCW 36.70A.070(1)</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Regulations in OHMC 12.30 address stormwater and its management. The regulations create a strong link between stormwater management and land use permits.
<p>l. Regulation of geologically hazardous areas consistent with public health and safety concerns. RCW 36.70A.030(9), RCW 36.70A.060(2) and RCW 36.70A.172(1) WAC 365-190-120</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 20.28 is dedicated to regulations for geologically sensitive areas and identifies unstable slopes, steep slopes and moderate to high liquefaction areas mapped in Oak Harbor as areas to be regulated by the code for public health and safety.
<p>m. Provisions that allow “reasonable use” of properties constrained by presence of critical areas. RCW 36.70A.370. See <i>Attorney General’s Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property</i> for guidance</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 20.12.060 addresses reasonable use of properties constrained by presence of critical areas.
<p>n. If your city is assuming regulation of forest practices as provided in RCW 76.09.240: forest practices regulations that protect public resources, require appropriate approvals for all phases of conversion of forest lands, are guided by GMA planning goals, and are consistent with adopted critical areas regulations. RCW 36.70A.570, Amended in 2007, 2010 and RCW 76.09.240 Amended in 2007, 2010 <i>Note: Applies only to counties fully planning under the GMA with a population greater than 100,000 and the cities and towns within those counties where a certain number of Class IV applications have been filed within a certain timeframe.</i></p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	NA
11. Shoreline Master Program See Washington State Department of Ecology’s SMP Submittal Checklist			
<p>a. Zoning is consistent with Shoreline Master Program (SMP) environmental designations. RCW 36.70A.070; RCW 36.70A.480 WAC 365-196-580</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	
<p>b. If SMP regulations have been updated to meet Ecology’s shoreline regulations: protection for critical areas in shorelines is accomplished solely through the SMP. RCW 36.70A.480(4), Amended in 2003 and 2010 and RCW 90.58.090(4). WAC 365-196-580</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	City has adopted new SMP regulations that are in compliance with this requirement. Awaiting Department of Ecology approval.

12. The Zoning Code should contain the following provisions:			
a. Family daycare providers are allowed in areas zoned for residential or commercial uses. Zoning conditions should be no more restrictive than those imposed on other residential dwellings in the same zone, but may address drop-off and pickup areas and hours of operation. RCW 36.70A.450 , WAC 365-196-865	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The zoning code may need to be amended to include "Family Day Care" centers as a principal permitted use. The definition section may also need to be amended to differentiate between a "Family" day care and commercial day care.
b. Manufactured housing is regulated the same as site-built housing. RCW 35.21.684 , 35.63.160 , 35A.21.312 and 36.01.225 , All Amended in 2004	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 16.04.020(2) addresses this requirement. OHMC 19.20.105 includes Manufactured Homes subdivisions and regulated same as single family detached structures.
c. If the city has a population over 20,000 accessory dwelling units (ADUs) are allowed in single-family residential areas. RCW 43.63A.215(3)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 19.34 is specifically dedicated to accessory dwelling units.
a. If there is an airport within or adjacent to the city: zoning that discourages the siting of incompatible uses adjacent to general aviation airports. RCW 36.70A.510 , RCW 36.70.547 , New in 1996) <i>Note: The zoning regulations must be filed with the Aviation Division of WSDOT. WAC 365-196-455</i>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	City is not adjacent to "general" aviation airport but is adjacent to a military base and has regulations in OHMC 19.50 that creates an overlay zone on use restrictions.
b. If there is a Military Base within or adjacent to the jurisdiction employing 100 or more personnel: zoning that discourages the siting of incompatible uses adjacent to military bases. RCW 36.70A.530(3) , New in 2004. WAC 365-196-475	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	See above.
o. Residential structures that are occupied by persons with handicaps must be regulated the same as a similar residential structure occupied by a family or other unrelated individuals. RCW 36.70A.410 , WAC 365-196-860	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The definitions should be reviewed against current State law.
p. Cities adjacent to I-5, I-90, I-405, or SR 520 and counties -- for lands within 1 mile of these highways -- must adopt regulations that allow electric vehicle infrastructure (EVI) as a use in all areas except those zoned for residential or resource use, or critical areas by July 1, 2011. RCW 36.70A.695 , New in 2009	<input type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	NA
q. Development regulations of all jurisdictions must allow electric vehicle battery charging stations in all areas except those zoned for residential or resource use, or critical areas by July 1, 2011. RCW 36.70A.695 , New in 2009	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC does not address EV charging stations but the are not prohibited either. Language can be added to specifically allow them.
13. Subdivision Code regulations			
a. Subdivision code is consistent with and implements comprehensive plan policies. RCW 36.70A.030(7) and 36.70A.040(4)(d) , WAC 365-196-820	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 21.10.010 specifies the implementation of the Comprehensive Plan goals and policies.
b. Code requires written findings documenting that proposed subdivisions provide appropriate provision under RCW 58.17.110(2)(a) for: Streets or roads, sidewalks, alleys, other public	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further	OHMC Title 21 addresses this requirement in various sections related to subdivision

ways, transit stops, and other features that assure safe walking conditions for students; potable water supplies [RCW 19.27.097], sanitary wastes, and drainage ways (stormwater retention and detention); open spaces, parks and recreation, and playgrounds; and schools and school grounds. WAC 365-196-820(1)		review needed	requirements.
c. Subdivision regulations may implement traffic demand management (TDM) policies. RCW 36.70A.070(6)(a)(vi)	<input type="checkbox"/> ✓ No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further review needed	N/A
d. Preliminary subdivision approvals under RCW 58.17.140 are valid for a period of five, seven, or nine years. [RCW 58.17.140 and RCW 58.17.170. Amended 2010 by SB 6544. Expires 2014. Amended 2012 by HB 2152 <i>Note:</i> House Bill 2152, adopted by the Legislature in 2012, modified timelines. The preliminary plat approval is valid for: seven years if the date of preliminary plat approval is on or before December 31, 2014; five years if the preliminary plat approval is issued on or after January 1, 2015; and nine years if the project is located within city limits, not subject to the shoreline management act, and the preliminary plat is approved on or after December 31, 2007.	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 21.20.080 needs to be amended to reflect this change.
14. Concurrency , Impact Fees, and TDM			
a. The transportation concurrency ordinance includes specific language that prohibits development when level of service standards for transportation facilities cannot be met. RCW 36.70A.070(6)(b)	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further review needed	OHMC 11.32 is a chapter dedicated to concurrency and 11.32.040.(5) includes language for permit denial failing concurrency.
b. <i>If</i> adopted: impact fee methods are consistent with RCW 82.02.050 through 100 <i>Note:</i> The timeframe for expending or encumbering impact fees has been extended to ten years. RCW 82.02.070 and RCW 82.02.080, Amended in 2011. WAC 365-196-850	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	OHMC 3.63.070(5) needs to be amended to reflect the 10 year time period.
<i>If</i> required by RCW 70.94.527: a commute trip reduction ordinance to reduce the proportion of single-occupant vehicle commute trips. RCW 70.94.521-551, Amended in 2006. WAC 468-63 <i>Note:</i> WSDOT maintains a list of affected jurisdictions	<input type="checkbox"/> ✓ No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further review needed	Oak Harbor is not on the list of affected jurisdictions.
15. Siting Essential Public Facilities (EPFs)			
Regulations are consistent with Essential Public Facility siting process in countywide planning policies or city comprehensive plan, and do not preclude the siting of EPFs. RCW 36.70A.200(5) WAC 365-196-550	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further review needed	OHMC 19.38 has language to include siting of essential public facilities.
16. Project Review Procedures			
Project review processes integrate permit and environmental review for: notice of application; notice of complete application; one open-record public hearing; allowing applicants to combine public hearings and decisions for multiple permits; notice of decision; one closed-record appeal. RCW 36.70A.470, RCW 36.70B and RCW 43.21C WAC 365-196-845	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further review needed	OHMC 18.20.360 addresses integrated permit process procedures
17. General Provisions: The GMA requires that development regulations be consistent with and implement the comprehensive plan. RCW 36.70A.030(7) and .040(4)(d). Regulations should also include:			
a. A process for early and continuous public participation in the development regulation development and amendment process. RCW 36.70A.020(11),.035, .130 and .140	<input type="checkbox"/> No <input type="checkbox"/> ✓ Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> Further	Development Regulations amendments are Type V and public notices requirements are

		review needed	in OHMC 18.20.380(5).
<p>b. A process to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. RCW 36.70A.370, WAC 365-196-855 <i>Note: See Attorney General's Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property.</i></p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	OHMC Title 19 has specific sections dedicated for flexibility from the strict code requirement through variances, map amendments etc. Code amendment procedures and criteria may need revising.

This checklist covers the requirements of the Growth Management Act through the laws of 2012. It does not address related issues, or things that are not required but that are commonly found in comprehensive plans and the implementing regulations. It may be useful to look at the expanded checklists (one for comprehensive plans, one for development regulations) and the Growth Management Act Amendment Changes 1995-2012 (amended annually). For more information, please visit:

<http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Growth-Management-Planning-Topics/Pages/GMA-Periodic-Update.aspx>

2013

DRAFT



Public Participation Plan

2016 Comprehensive Plan Update

Section RCW 36.70A.140 of Washington Statutes requires local governments to establish and broadly communicate to the public a Public Participation Plan which identifies procedures providing for “early and continuous public participation” in the amendment of the Comprehensive Plan and development regulations implementing such plan.



Introduction

Oak Harbor's Comprehensive Plan and development regulations need to be reviewed periodically and updated to reflect current laws, correct errors, input new data, and/or clarify intent.

Washington State's Growth Management Act (GMA) requires Oak Harbor to undertake this review and update its Comprehensive Plan and development regulations by June 2016.

As part of this update process, Section 36.70A.140 of the Revised Code of Washington requires local governments to establish and broadly communicate to the public a Public Participation Plan which identifies procedures providing for "early and continuous public participation" in the amendment of the Comprehensive Plan and development regulations implementing such plan.

The City recognizes the importance and necessity of the public involvement process. The City has several boards and commissions that serve in various capacities to foster public input, discuss complex issues, further goals and policies of adopted plans and make recommendations to the City Council. The Planning Commission of Oak Harbor serves as the hearing body for amendments and updates to the City's Comprehensive Plan and development regulations. The Planning Commission makes recommendations to the City Council who ultimately decides on the adoption of amendments and updates. All meetings of the Planning Commission and the City Council are open to the public and have dedicated time for public input on their agenda.

Goals and Objectives

The goal of the Public Participation Plan is to provide the public with complete information, timely public notice, full public access to key decision points, and support early and continuous involvement in the process. It is also the goal of the PPP to provide the public with sufficient information so that there is an understanding of the process, and opportunities to review and comment on updates before decisions are made. Public is defined broadly to include individual citizens, interest groups, trade groups, government agencies, utilities and service providers and businesses.

The City's current Comprehensive Plan and development regulations integrate public involvement into its decision making process. OHMC 18.15 outlines the requirements for public involvement during annual amendments to the Comprehensive Plan and OHMC 18.20 provides the regulations for public noticing for permit processes and other development regulated activities. Though the City will abide by all the existing requirements, this Public Participation Plan describes the steps it will take to involve the community in decisions regarding the 2016 Comprehensive Plan Periodic Update.

Stakeholders and Public Groups

The GMA does not specifically exempt any portion of a comprehensive plan or development regulation from being subject to review and evaluation. While some elements may not require

updating others may need to be updated based on changes to laws. The Department of Commerce has provided a checklist to help cities determine the portions of a comprehensive plan that needs to be updated. A review of the plan against this checklist provides a scope of the amendments necessary to comply with GMA.

The scope of the update will determine the involvement of key stakeholders and interest groups. It is beneficial to identify these groups and involves them early in the process. Some of the groups and individuals that could have a potential interest in public input and involvement opportunities are identified below. The list below serves as an initial identifier of interested groups and is not intended to exclude any groups from the process.

- Government agencies – state, county, school district, etc.
- NAS Whidbey Island
- Chamber of Commerce and other business groups
- Media – newspaper
- Organizations and individuals who have been notified of public hearings for major projects, or organizations and individuals who have submitted written comments on other major projects.
- Whidbey Environmental Action Network (WEAN)
- Skagit/Island Counties Builders Association (SICBA)

Information Access

All reports and documents generated for the 2016 Update to the Comprehensive Plan are available to the public for review. This information may be viewed at Oak Harbor's City Hall or online at the City's website www.oakharbor.org under the Development Services Department/Planning Division/Plans Under Progress tab.

Outreach Techniques

As mentioned earlier, the Planning Commission shall serve as the primary body to discuss, review and recommend changes to policies and regulations regarding the 2016 update. The Planning Commission meetings will be advertised on the City's website and in the local newspaper. Agendas for the Planning Commission meetings are noticed in the newspaper generally two weeks prior to the meeting date. Reports to the Planning Commission are posted on the City's website approximately five days before the meeting date.

The City maintains an active involvement in the local government access cable channel. All Planning Commission meetings are recorded and then played back on Channel 10 a minimum of 5 times a week until the next meeting. The rebroadcasting provides the public access to the process and information of key decisions during the review process.

The City's website www.oakharbor.org has links on the home page to the Planning Commission's agendas and reports. It lists the date of the next upcoming Planning Commission meeting on the calendar. The website also has an "Oak Harbor News" section on the homepage that will also be used to notice of any special meetings associated with the 2016 update.

The City's website also contains information on the 2016 update in the Development Services section under "Departments" tab on the homepage. It is under the "Plans Under Progress" section of the Planning Division. This section of the website will have access to reports, studies, and issue papers that are related to the update.

The Development Services Department maintains a list of interested groups and individuals that have expressed interest in Comprehensive Plan related issues since 2005. Notices of meeting related to the 2016 update will be mailed to them.

During the update process, various other methods of outreach may be used based on the kind of input that is most efficient and helpful to the issue under consideration. This can range from open houses, surveys, ad hoc committees, workshops, public displays etc.

Input Mechanisms

The City accepts input and comments from the public through a variety of means. Members of the public can visit with planners in the Development Services Department to make comments and provide input. Members of the public can also make comments by calling the Development Services Department at 360-279-4510. Written comments are the most effective way to get on record with the Comprehensive Plan update. Comments can be faxed to the City at 360-279-4519 or mailed to:

Development Services Department
Attn: 2016 Update
865 SE Barrington Ave
Oak Harbor, WA 98277

Public comments can also be emailed to a dedicated 2016 update email account – 2016update@oakharbor.org.

The public may also make verbal comments or submit written comments at Planning Commission meetings and City Council meetings. There is a dedicated time on the agenda for public input on general issues at these meetings. The Planning Commission and City Council generally entertain public comments when a particular Comprehensive Plan item is on the agenda for discussion, even if it is not scheduled for a public hearing.

Interested members of the public or a representative of a group, with expressed comments on a particular topic may request to serve on committees if one it activated.

Contact information

The primary contact for the update is provided below.

Senior Planner, Cac Kamak, AICP.
Development Services Division
Attn: 2016 Update
865 SE Barrington Ave
Oak Harbor, WA 98277

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Website: www.oakharbor.org