



PLANNING COMMISSION

AGENDA

September 22, 2015

ROLL CALL: WASINGER_____ FREEMAN_____

 PETERSON_____ SCHLECHT_____

 PICCONE_____ PIERCE _____

 WALKER-WYSE_____

Page 4
1. **Approval of Minutes – August 25, 2015**

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.

Page 27
3. **MARITIME ZONING ORDINANCE – Public Hearing**
The Planning Commission will conduct a public hearing to consider an ordinance implementing zoning regulations for the Maritime Zoning District. The Planning Commission will forward a recommendation to the City Council at the conclusion of the hearing.

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4. **WIRELESS FACILITIES MODIFICATION – Public Hearing**
The Federal Communications Commission (FCC) approved revised requirements for local review and approval for collocation, removal, and replacement of wireless facilities. Staff will present draft code amendments to Title 19 Oak Harbor Municipal Code implementing the new FCC requirements. The Planning Commission will forward a recommendation to the City Council at the conclusion of the meeting.

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5. **2016 COMPREHENSIVE PLAN UPDATE – Public Meeting**
Staff will provide an update on the progress of the 2016 Comprehensive Plan update. The major scope of the 2016 Comprehensive Plan update includes updates to the Land Use Element, Housing Element and the Transportation Element.

MINUTES

August 25, 2015

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
August 25, 2015**

ROLL CALL: Present: Greg Wasinger, Bruce Freeman, Sandi Peterson, Cecil Pierce and Jes Walker-Wyse and Ana Schlecht
Absent: Mike Piccone
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Dennis Lefevre; Associate Planner Ray Lindenburg and Arnie Peterschmidt, Project Engineer
Transportation consultants: Kendra Breiland and Alex Riomondy

Chairman Wasinger called the meeting to order at 7:31 p.m.

MINUTES: MS. WALKER-WYSE MOVED, MS. PETERSON SECONDED, MOTION CARRIED TO APPROVE THE JULY 28, 2015 MINUTES AS PRESENTED.

PUBLIC COMMENT

Mr. Hal Hovey commented that the City website first published that the Planning Commission meeting was on August 20th and then there was nothing about the Planning Commission meeting.

Mr. Powers noted that sometimes there are technical difficulties or operator error and that a phone call to the city staff could have corrected the problem or answered any questions.

COMPREHENSIVE PLAN TRANSPORTATION ELEMENT – Public Meeting

Mr. Lefevre reported that the transportation element is required to be reviewed and updated as part of the City's Update process to be completed by the end of June 2016. Mr. Lefevre introduced Kendra Breiland and Alex Riomondy, the Fehr & Peers consultant team selected to assist in updating the transportation element of the City's Comprehensive Plan.

Ms. Breiland and Ms. Riomondy displayed a PowerPoint presentation (Attachment 1) and gave an overview of the Growth Management Act (GMA) requirements, transportation planning approaches, level of service (LOS) and funding availability.

2016 COMPREHENSIVE PLAN UPDATE – Public Meeting

Mr. Kamak displayed a PowerPoint presentation (Attachment 2) and briefed the Planning Commission on the status of the Countywide Planning Policies, modifications to the generalized land use map/districts and the employment data/projections.

Planning Commissioners discussed the employment data, questioning staff about whether the employment data included only people that live in Oak Harbor. Mr. Kamak indicated that the employers in Oak Harbor report only the people they employ and the self-employed are also included. If people are coming to work in Oak Harbor from other cities they are included in the Oak Harbor employment data.

ADJOURN: 8:30 p.m.

Minutes submitted by: Katherine Gifford

Overview of Topics



- GMA Requirements
- Transportation Planning Approaches
- Level of Service (LOS)
- Funding Availability



City of Oak Harbor Transportation Element Update



FEHR & PEERS

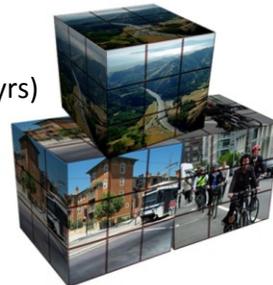
GMA Requirements for Transportation

- Land use assumptions align with travel demand forecasts
- Intergovernmental coordination
- Level of service policies established for all modes
- Facility recommendations align with level of service objectives
- Financially constrained



What is a Transportation Element?

- Required element of City's Comprehensive Plan per the Growth Management Act (GMA)
- Consider various modes
- Level of Service
- Needed facilities and services (20 yrs)
- Funding program



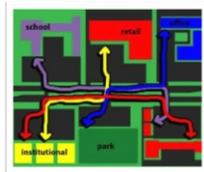
Key Principle: ROW = Public Realm

Treat roadways as public spaces that influence urban environments.



Key Principle: Connectivity

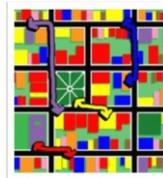
- Conventional: Disconnected, Separate Uses



- Overall less capacity
- Higher number of crashes*
- Not ped/bike/transit friendly
- Slower emergency response**

Sources: * Research in 24 cities, 130,000 crashes
** City of Charlotte, NC

- Traditional: Connected, Mixed Uses



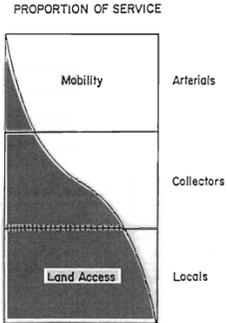
- Overall more capacity
- Fewer, less severe crashes
- Multiple direct travel options
- Ped/bike/transit friendly
- Fewer/shorter auto trips
- Faster emergency response**

Functional Classification and Context

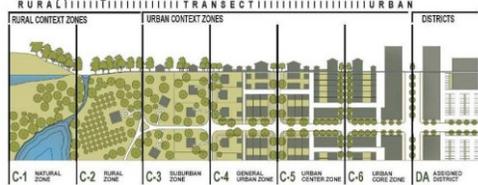
Context Factors

- Land Use Type
- Development Densities
- Form (e.g. height and setback)
- Corridor Users

Conventional



New Typologies



Key Principle: Sustainable

Be planned with consideration of **environmental, social and economic issues.**



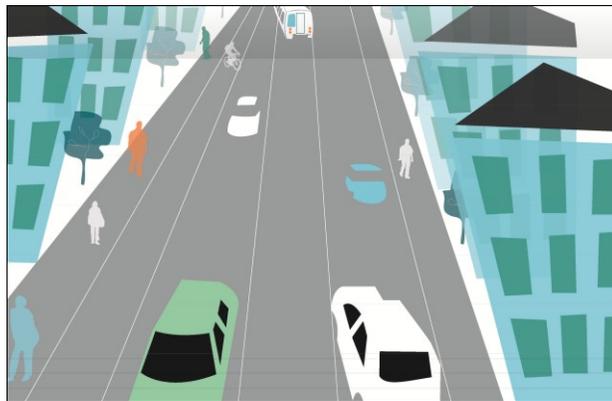
Oak Harbor's Existing Level of Service Policy

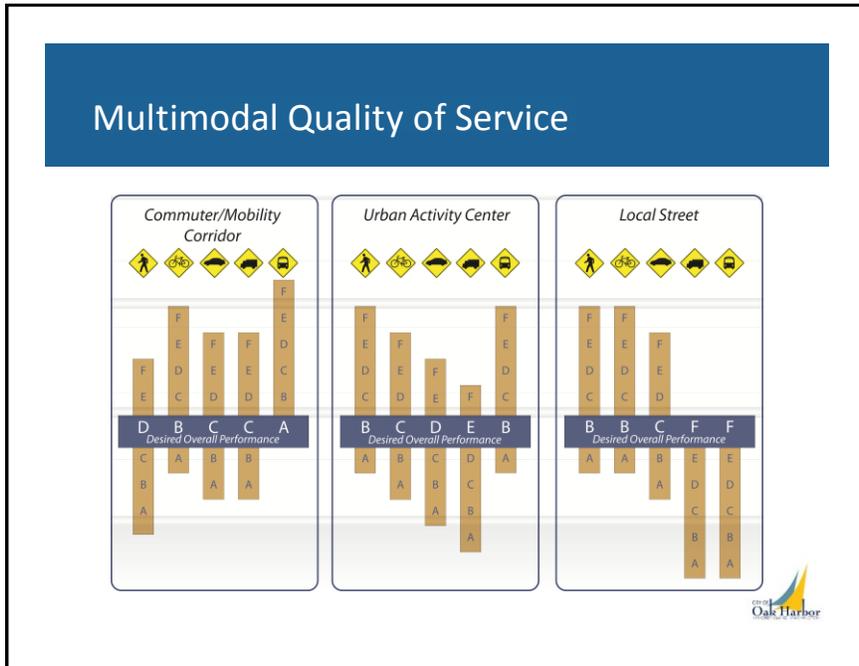
- LOS D or better- for intersections on City streets within the City UGA
- LOS E- for intersections along SR 20 within the City's UGA

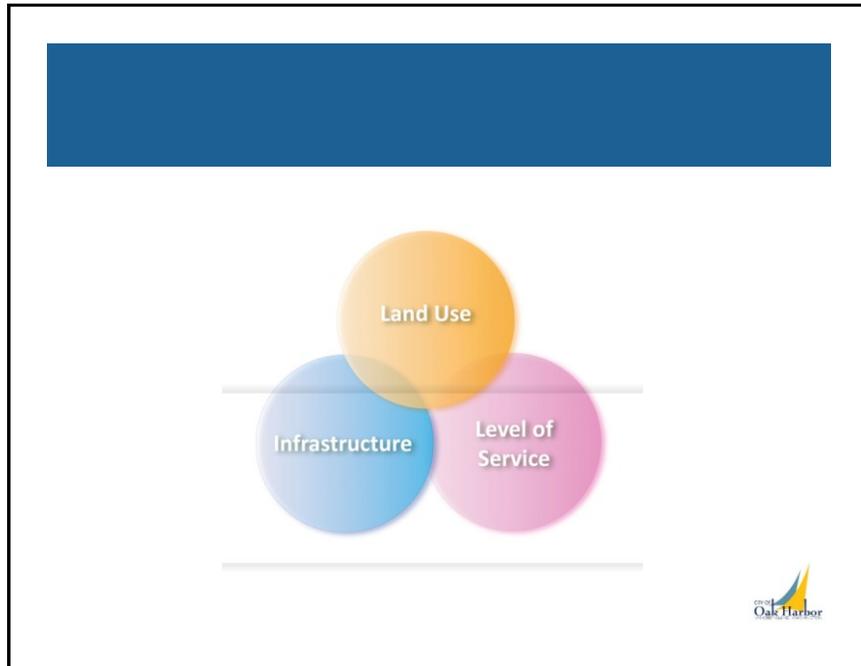
Level of Service	Description
A	Free-flowing conditions.
B	Stable operating conditions.
C	Stable operating conditions, but individual motorists are affected by the interaction with other motorists.
D	High density of motorists, but stable flow.
E	Near-capacity operations, with significant delay and low speeds.
F	Over capacity, with delays.



Multimodal Level of Service

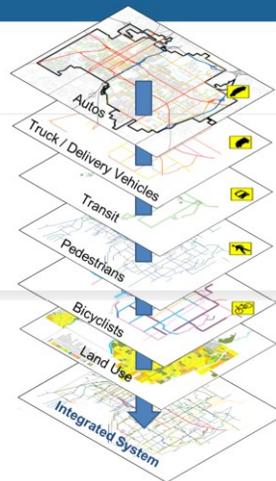
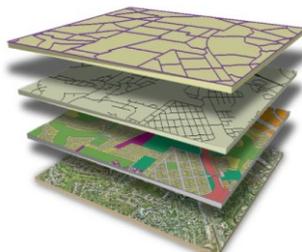






Complete Networks, Rather than Complete Streets

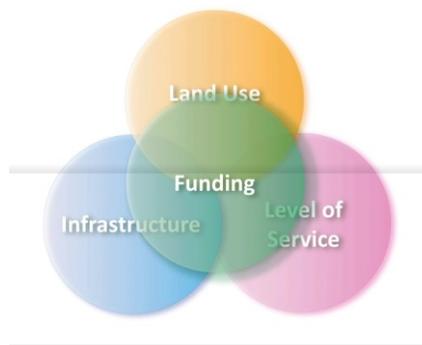
Balanced, layered multimodal networks that serve pedestrians, bicyclists, transit riders, motorists, and freight/goods movement.



Funding for Transportation

Historical Sources:

- Pay-As-You-Go
- Impact fees
- Grants
- Bonds/Levies?
- Island County Funds?
- Transportation Benefit Districts?
- Other?



Upcoming Meetings

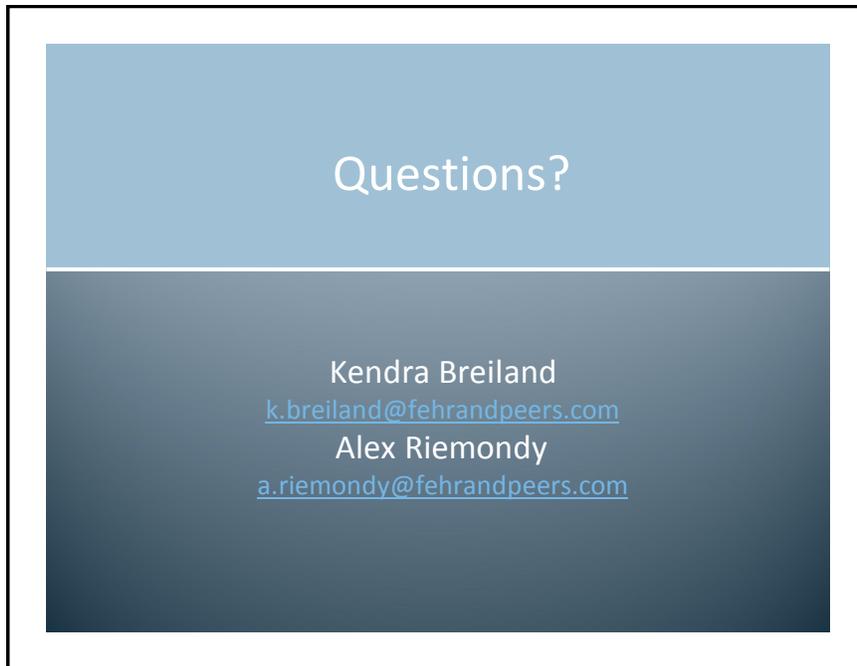
Topic	Planning Commission	City Council
Goals & Policies	November 2015	January 2016
Level of Service	December 2015	
Policy Project List	February 2016	May 2016
Draft Plan	April 2016	



2015-2020 TIP

Projects	Total Project Costs	Schedule					
		2015	2016	2017	2018	2019	2020
Local Street Overlays	2,100,000	0	0	500,000	500,000	550,000	550,000
Bayshore Drive Extension	3,500,000	0	0	0	0	3,500,000	0
Whidbey Avenue Crosswalk	224,500	224,500	0	0	0	0	0
Waterfront Trail (Veterans' Park)	150,000	150,000	0	0	0	0	0
Heller Street Overlay (Whidbey to Crosby)	345,000	0	0	0	0	345,000	0
W. Pioneer/City Beach/Bayshore Intersection	\$200,000				\$200,000		
Pedestrian Access Improvements	498,000	0	0	114,000	122,000	128,000	134,000
Capital Project Expenditures	\$7,017,500	\$374,500	\$0	\$614,000	\$822,000	\$4,523,000	\$684,000
Revenue Sources	6-Year Total	2015	2016	2017	2018	2019	2020
Contributions from Beginning Fund Balance:							
Streets (Fund 101)	\$1,000,000	\$0	\$0	\$250,000	\$250,000	\$250,000	\$250,000
Avenues (Fund 104)	200,000	0	0	0	0	100,000	100,000
Transportation Capital Improvements (Fund 105)	400,000	0	0	0	0	200,000	200,000
Transportation Impact Fees	213,264	33,725	34,500	35,190	35,894	36,612	37,344
REET 1 (50% of annual)	522,500	85,000	87,500	87,500	87,500	87,500	87,500
REET 2 (50% of annual)	522,500	85,000	87,500	87,500	87,500	87,500	87,500
Motor/Vehicle Fuel Tax: Non-operating	150,000	25,000	25,000	25,000	25,000	25,000	25,000
General Fund	0	0	0	0	0	0	0
Grants	3,083,750	374,500	0	0	0	2,709,250	0
Other City Funds	500,000	0	0	0	0	500,000	0
Developer Contributions	1,000,000	0	0	0	0	1,000,000	0
Total Available Revenue	\$7,592,014	\$603,225	\$234,500	\$485,190	\$485,894	\$4,995,862	\$787,344
Total Revenues less Total Capital Expenditures	\$574,514	\$228,725	\$234,500	-\$128,810	-\$336,106	\$472,862	\$103,344





2016 Update

Comprehensive Plan
CWPP



Meeting Title
8/26/2015

County Wide Planning Policies (CWPP)

Update



Meeting Title **8/26/2015** **2**

CWPP

- March 2015 – County adopted CWPP
- Provided a 60 day comment period
- April 2015 – PC comments on the draft
- May 2015 – CC forwarded comments to County



Meeting Title

8/26/2015

3

CWPP

- Comments addressed
 - Minor clarifications
 - Suggestions for consistencies within document
 - References to state intent
 - Buildable Lands Analysis (BLA) – redevelopment factor



Meeting Title

8/26/2015

4

CWPP

- BLA
 - Parcels for redevelopment
 - Parcels greater than two times the min lot size (7200)
 - 50% reduction of lots between 2-2.5 times min lot size
 - GIS and area analysis indicated not a realistic factor
 - City shared analysis with County staff



Meeting Title

8/26/2015

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CWPP

- BLA
 - Resulting changes proposed are
 - 75% reduction for lots 2-2.5 times min lot size
 - 50% reduction for lots 2.6-3 times min lot size
 - 25% reduction for lots 3.1-3.5 times min lot size
 - 0% reduction for lots >3.5 times min lot size
 - City staff OK with proposed changes



Meeting Title

8/26/2015

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Comprehensive Plan

Update



Meeting Title 8/26/2015 7

Land Use Map

- Currently a one to one ratio with zoning map
- July PC meeting workshop – discussed Generalized option

Existing Land Use	Existing Zoning
Low Density Residential	R-1, Single Family
Medium Density Residential	R-2, Limited Multifamily
Medium-High Density Residential	R-3, Multifamily
High Density Residential	R-4, Multifamily
Residential Office	RO, Residential Office
Neighborhood Commercial	C-1, Commercial Neighborhood
Central Business District	CBD, CBD-1, CBD-2
Community Commercial	C-3, Community Commercial
Auto/Industrial Commercial	C-4, Highway Service Commercial
Highway Corridor Commercial	C-5, Highway Corridor Commercial
Planned Industrial Park	PIP, Planned Industrial Park
Planned Business Park	PBP, Planned Business Park
Industrial	I, Industrial
Public Facilities	PF, Public Facilities
Maritime	M, Maritime
Residential Estates	PRE, Planned Residential Estates
Open Space	OS, Open Space



Meeting Title 8/26/2015 8

Generalized Land Use Map

Existing Land Use

Residential Estates
Low Density Residential
Medium Density Residential
Medium-High Density Residential
High Density Residential
Residential Office
Neighborhood Commercial
Central Business District
Community Commercial
Auto/Industrial Commercial
Highway Corridor Commercial
Maritime
Planned Industrial Park
Planned Business Park
Industrial
Public Facilities
Open Space

Proposed Land Use

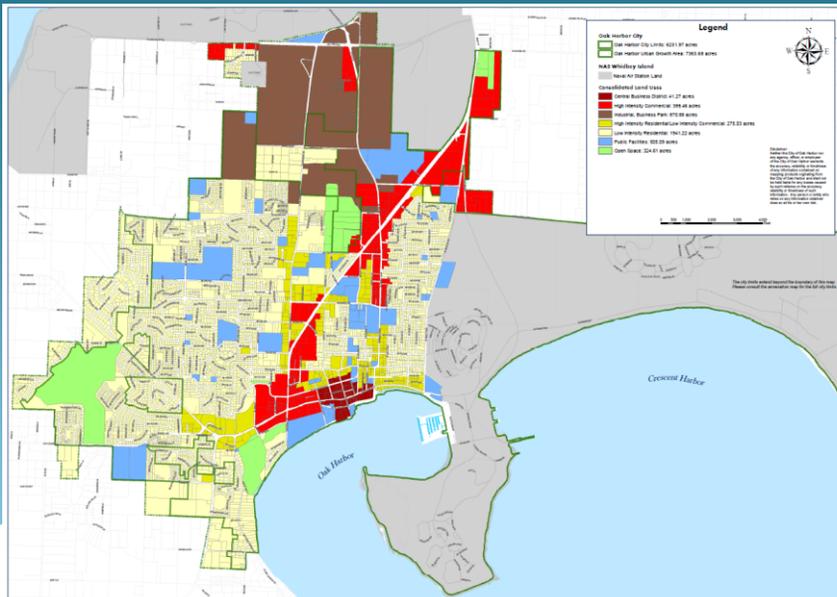
Low Intensity Residential
High Intensity Residential/Low intensity Commercial
Central Business District
High Intensity Commercial
Industrial/Business Park
Public Facilities
Open Space
Residential Estates



Meeting Title

8/26/2015

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Consolidated Land Uses

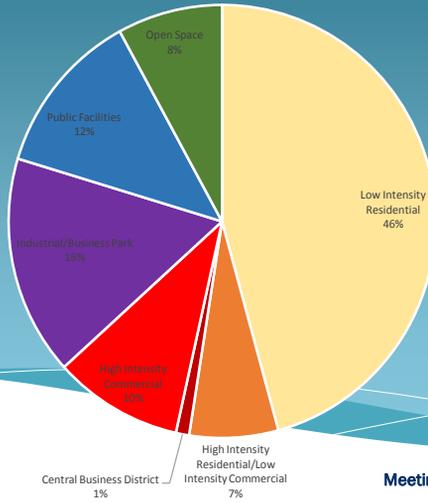


Meeting Title

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Generalized Land Uses



Meeting Title

8/26/2015

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District option

- Building on Neighborhoods concept
- Application of existing goals and policies
 - Small town
 - Regional center
 - Unique character of neighborhoods
- Targeted policies to address preservation and change



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8/26/2015

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Districts - proposed

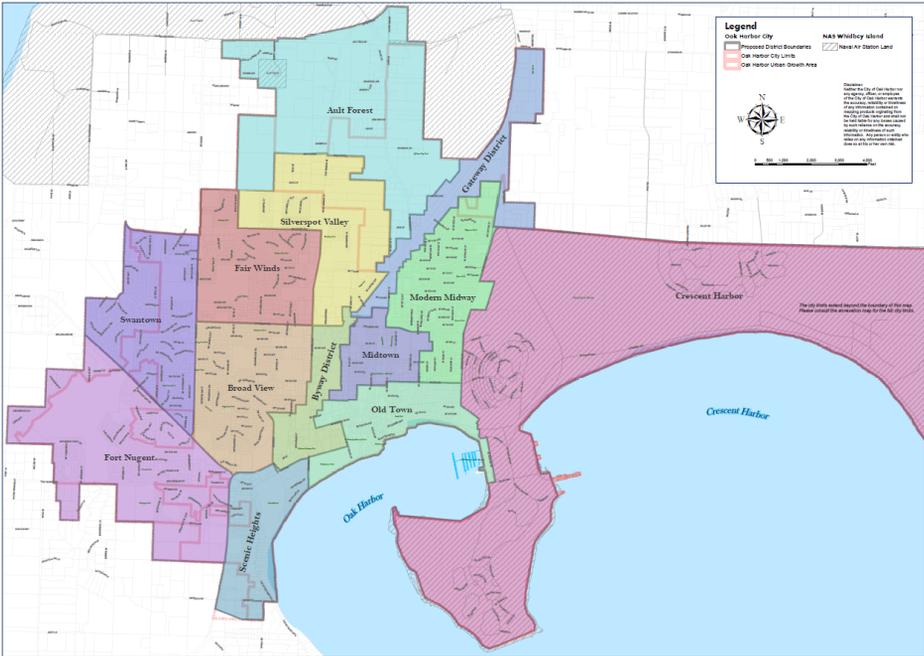
- Ault Forest
- Gateway
- Silverpot Valley
- Fairwinds
- Swantown
- Broadview
- Fort Nugent
- Modern Midway
- Midtown
- Old Town
- Byway
- Scenic Heights
- Crescent Harbor



Meeting Title

8/26/2015

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Proposed Districts



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Employment Stats



Meeting Title

8/26/2015

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Employment Projections

Data

- Information used along with population projections
- Intended to study fluctuations in trends
- Accommodate any known or predetermined increases and decrease

Methodology

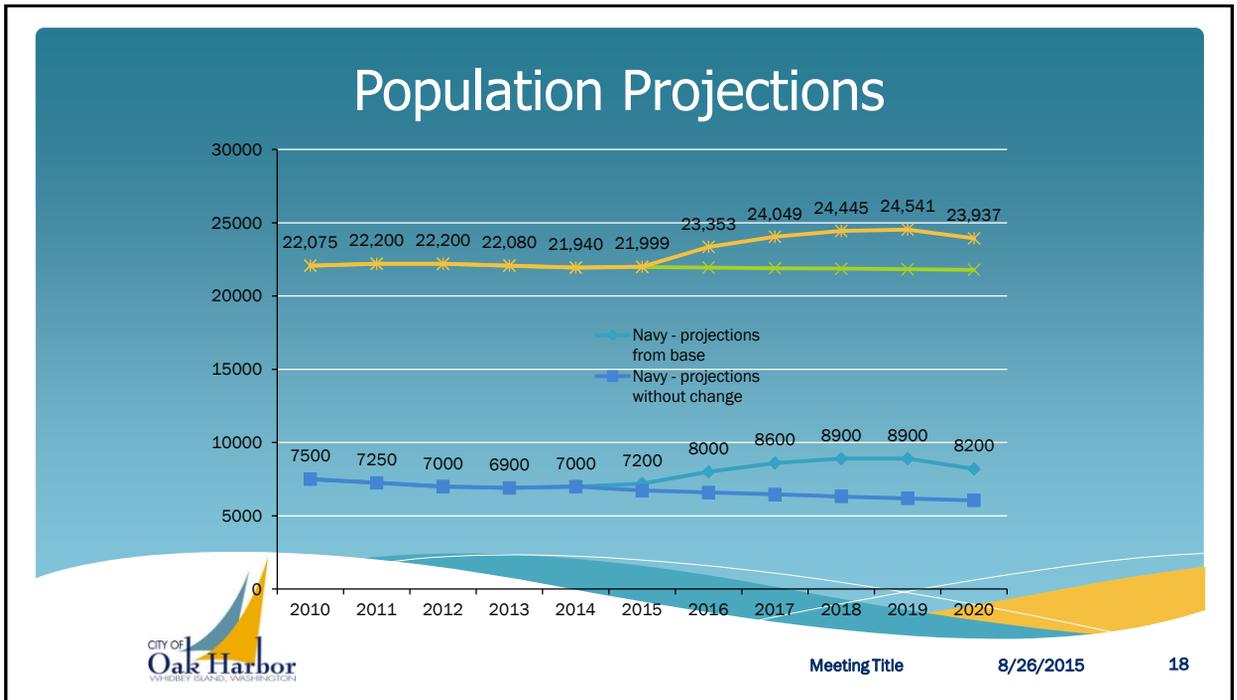
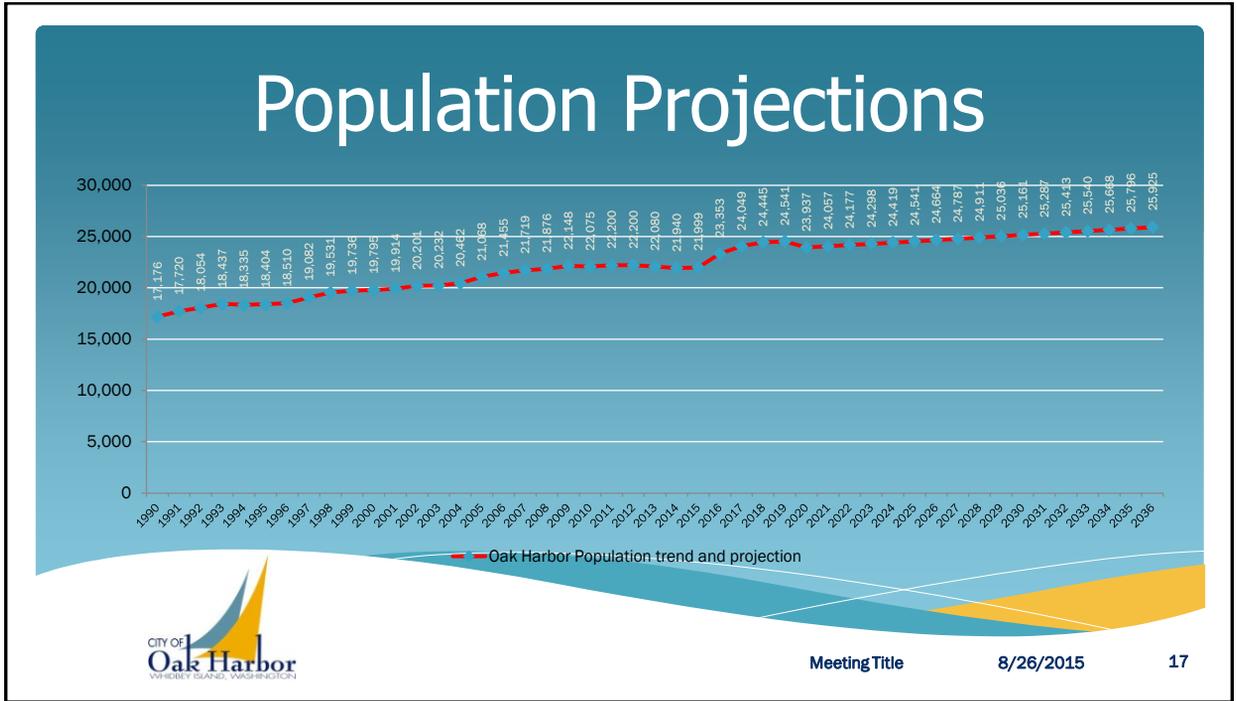
- Based on populations and projections
- Uses data reported on employment
- PER – Population to Employment Ratio



Meeting Title

8/26/2015

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Employment Data

	2005	2006	2007	2008	2009	2010	2011	2012	2013
WA State Population	6257300	6370800	6461600	6562200	6667400	6744500	6822100	6896300	6973700
Island County Population	79744	81109	80860	80847	81054	78692	78969	79230	78589
Oak Harbor Population	21,068	21,455	21,719	21,876	22,148	22,075	22,200	22,200	22,080
WA State total employed	3,114,000	3,160,000	3,261,000	3,286,000	3,216,000	3,180,000	3,127,000	3,184,000	3,221,000
Island County total employed	29751	30548	31150	31144	30058	30665	29685	29889	29331
Oak Harbor total employed	11750	12596	13702	13394	11836	11746	11702	11375	11378
Oak Harbor total establishments	1809	1913	1958	1905	1825	1764	1696	1685	1687
WA PER	2.01	2.02	1.98	2.00	2.07	2.12	2.18	2.17	2.17
Island County PER	2.68	2.66	2.60	2.60	2.70	2.57	2.66	2.65	2.68
Oak Harbor PER	1.79	1.70	1.59	1.63	1.87	1.88	1.90	1.95	1.94
								average	1.81



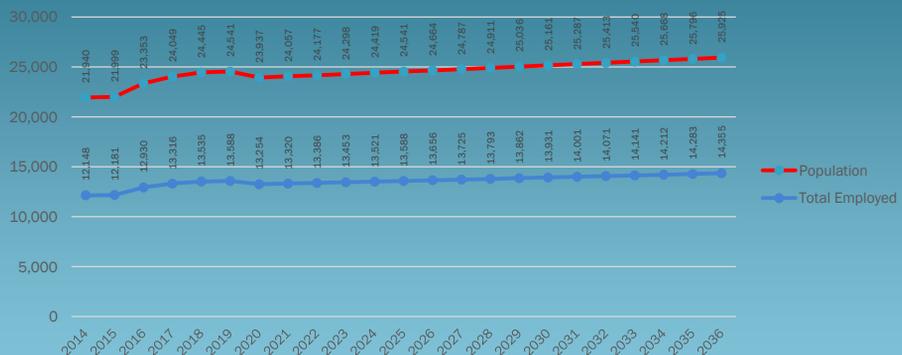
Meeting Title

8/26/2015

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Employment Data

Oak Harbor, Population to Employment Ratio projections



Meeting Title

8/26/2015

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SUMMARY

- CWPP
 - Clarifications, consistencies and references
 - Changes to market factor for redevelopment
- Generalized Land Uses
 - Combining of classification
 - Creation of neighborhood districts
- Employment Data
 - PER
 - Avg 1.81
 - Projections



Maritime
Zoning Ordinance

Public Hearing

CITY OF OAK HARBOR

TO: PLANNING COMMISSION
FROM: CAC KAMAK, SENIOR PLANNER
SUBJECT: MARITIME ZONING
DATE: 9/15/2015
CC: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

Purpose: The purpose of this memo is to introduce the zoning regulations for the Maritime Zoning District. The Maritime land use category was created with the adoption of the 2012 Comprehensive Plan Amendments to accommodate water-dependent, and water-related industrial and commercial uses, on lands adjacent to the marina. The proposed regulations implement the intent of the Maritime District. The Planning Commission is requested to conduct a public hearing on the proposed regulations.

Background: In 2012, the Comprehensive Plan was amended to create a new land use category called “Maritime”. The intent of creating this new category was to provide an opportunity for maritime industrial and commercial uses to locate adjacent to the marina. To implement the intent of the new land use category, zoning regulations have to be crafted and adopted. The proposed regulations include the type of uses that would be permitted by right, ones that will need a conditional use permit, development regulations (area ratios, density, parking etc.) and other requirements.

Discussion: The formulation of the proposed regulations relied on key words and phrases within the intent statement for the Maritime designation to determine the permitted uses and development standards. Some of these phrases include:

- Accommodate high intensity water- related and water-dependent uses
- Clean industrial uses
- Commercial uses similar to uses permitted in the Central Business District
- Flexible standards for streets and parking
- Sufficient screening between industrial and commercial uses

The above language has been used to formulate regulations for the district. The regulations also borrow heavily from the Shoreline Master Program (SMP). Since the area designated as Maritime is adjacent to the shoreline, development in this area will require review against the Shoreline Master Program (SMP) regulations.

The proposed regulations borrows the SMP’s categorizations of uses to determine the kind of uses that can be permitted within the Maritime zoning district. For example, the

SMP defines *water-dependent* uses as a use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operation (e.g. ship cargo terminals, ferry terminals, ship building, marinas, aquaculture, float plane services etc.), and a *water-related* use as a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic vitality is dependent upon a waterfront location because of a functional requirement for a waterfront location or the use provides a necessary service supportive of a water-dependent activity and the proximity of the use to its customers makes its service less expensive or convenient. The SMP also defines *water-enjoyment*¹ uses. All of the above types of uses can be permitted in the Maritime district. The proposed regulations uses the above categories to list the uses that could locate in this district.

The intent statement of the Maritime designation includes “clean” as a description for industrial uses. This is a performance standard and can be included in the regulations to prohibit activity that has the potential for generating byproducts or waste that is discharged into the air or water within this district. The draft code includes some of these provisions under the “Conditions Governing Permitted Uses” section of the proposed code.

The intent of the Maritime zoning district also includes language expressing a need for a mix of commercial uses that will support the maritime industry. The language suggests commercial uses similar to the Central Business District (CBD). Although the list of uses permitted in the CBD is extensive, not all uses are appropriate for the Maritime district. One way to short list the uses is to include uses that have a low traffic impact since the intent statement also identifies traffic challenges in the area. Therefore, uses that are parking or space intensive such as theatres, furniture stores, schools etc. can either be prohibited or required to obtain a conditional use permit. Many specialty retail uses, such as antique shops, tailor shops, shoe repair etc, can also be either prohibited or conditioned. The current draft includes some novelty stores such as gift shops, hobby stores and other similar uses that may support water-related-oriented uses. Food and beverage establishments are also included since they support water-oriented-related uses and compliment all other uses in the area.

The Maritime Land Use should consider flexible standards for streets and parking as an incentive to foster development in the area. One of the major challenges in creating this land use category is the intersection of Pioneer Way, Catalina Drive and the security gate to the Seaplane Base. Since the proposed land uses in this area has the potential to generate traffic, creative solutions will need to be sought to address this issue. Creating flexible parking standards in this area is also intended to encourage the public to use the access provided by the waterfront trail with alternative modes of transportation.

¹ A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for the recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline.

Recognizing transportation challenges in this area, the intent statement indicates flexible parking standards and encourages the use of other modes of transportation. This can translate to various implementation strategies such as requirements for bicycle parking, eliminating parking requirements and limits on parking when provided.

The intent statement also indicates the importance of screening between commercial and industrial uses. OHMC 19.46 addresses the landscaping and screening requirements and should be sufficient to mitigate the impacts of these uses on each other.

Since the intent statement makes a strong connection to the CBD district and the SMP, development regulation for setbacks, lot area etc. have been adapted into the draft for this district from those documents. Since the district is primarily geared towards industrial development, it would be wise to prohibit residential uses in this district. Permitting residential in this district can set it up for impacts that will be hard to regulate against.

The proposed regulations include conditional uses for this district. Conditional uses are considered appropriate for a particular zoning district if they are able to mitigate or address some of the potential impacts that a use can have on the district and other uses. The impacts can range from traffic generation and parking to noise and light pollution. Conditional uses require a public hearing before the Hearing Examiner. The conditional uses that are currently included in the draft are conference centers, hotels and major utilities.

The Planning Commission has reviewed these regulations in December of 2014. At that time, notifications to other agencies, SEPA review, and a SEPA determination were remaining actions in the process of formal adoption. Staff has provided notice to the Department of Commerce on these regulations and has also done a SEPA review of them. A Determination of Non-Significance has been issued for these regulations.

Recommendations

- Conduct a public hearing on these regulations.
- Recommend approval of the Maritime Zoning District Regulations.

Attachments

1. Proposed Maritime Zoning Regulations
2. Comprehensive Plan - Maritime Land Use Designation description
3. Maritime Land Use Map
4. SEPA Checklist
5. SEPA Determination

19.20.900 Purpose and intent.

The purpose of this zoning district is to accommodate water dependent, water related and water enjoyment uses. These water dependent and related uses shall be clean industrial uses such as boat building, sail making, water dependent transportation, ware housing, and other uses that do not include processes that generate by products that needs to be discharged into the air or water. The intent of this district is to also accommodate commercial uses, to support and energize activity in this area. Since parking is limited in this area, the district should permit uses that are less dependent on automobiles, and promote the use of alternate modes of transportation. Considerations must be given to limit parking in this district to conserve land for buildings and activities.

19.20.905 Principal permitted uses.

In a maritime zoning district, the following are principal permitted uses:

Water-dependent uses such as:

- (1) Marinas
- (2) Yacht Clubs
- (3) Boat Launch ramps
- (4) Boat Repairs
- (5) Boat Storage
- (6) Ferry and Passenger Terminals
- (7) Float Plan facilities
- (8) Aquaculture
- (9) Sewer and storm outfalls
- (10) Boat building and related industry
- (11) Restoration activities

Water-related uses such as:

- (1) Warehousing of goods transported by water
- (2) Professional services serving water dependent activities
- (3) Marine hardware and retail store
- (4) Outdoor recreation outfitters

Water-oriented uses such as:

- (1) Mini-storage facilities related to the Marina
- (2) Offices that serve water dependent uses
- (3) Laundry facilities

Water-enjoyment uses such as:

- (1) Restaurants, cafes and food vendors
- (2) Bars, taverns and brew pubs
- (3) Gifts, hobbies, ice cream
- (4) Convenience store including groceries
- (5) Tours, visitor information centers
- (6) Governmental buildings and associated facilities
- (7) Transit terminals
- (8) Parks and open space

19.20.910 Accessory permitted uses.

Accessory uses are not primary uses and can be allowed along with other permitted accessory uses in a maritime district. The primary use shall be the largest use in a development or constitute 60% or more of the area. The following are accessory permitted uses:

- (1) Non water-oriented offices
- (2) Caretaker or security residences serving a permitted use
- (3) Utilities – accessory to permitted uses
- (4) Parking - accessory to permitted uses

19.20.915 Conditional uses permitted.

The following uses and their accessory uses may be permitted in a maritime district when authorized by the hearing examiner:

- (1) Conference Center;
- (2) Hotel and motel;
- (3) Transmission lines and other primary facilities

19.20.920 Uses prohibited.

The following uses are prohibited in the maritime zoning district:

- (1) Residential uses

19.20.930 Density provisions.

In the Maritime district the following density provisions apply:

- (2) Minimum lot area, no limitation;
- (3) Minimum lot width, no limitation;
- (4) Minimum lot depth, no limitation;
- (5) Maximum Height – 35 feet, 55 feet for water-dependent structures
- (6) Lots within 200 ft of the ordinary high water mark must meet the development standard requirements of the Shoreline Master Program.
- (6) Parking – There shall be no required parking for permitted and accessory uses. Bicycle racks shall be provided in accordance with the Design Guidelines and Regulations. If parking is provided, it shall not exceed the minimum required and shall meet the parking space size and access requirements of OHMC 19.44.110. Parking may be required for conditional uses. The number of parking spaces shall be determined by special studies and reduced to the minimum needed or available.

19.20.940 Conditions governing permitted uses.

All principal uses permitted outright in the Maritime district shall meet the following conditions:

- (1) Uses permitted in this district shall not include processes that generate by-products that need to be discharged into the air or water.
- (2) The use of property must not result in the creation of offensive odors and offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers between commercial and industrial uses shall be constructed and maintained in accordance with the provisions of OHMC Chapter 19.46.
- (4) Uses that are intended for storage or warehousing are not permitted to store material that are considered hazardous, toxic or environmentally damaging.
- (5) If located within 200 feet of the shoreline OHM, development standards established in the Shoreline Master Program shall be incorporated.

- (2) In the event that the requirements of this chapter contradict with the Shoreline Master Program, the more restrictive shall apply.
- (3) Adhere to the Design Guidelines and Regulations

19.20.950 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

Maritime Uses

The City created this land use in 2012 to accommodate high intensity water related and water dependent commercial and industrial uses. This land use category and the Maritime designation in the Shoreline Master Program have similar intent. This land use would accommodate uses such as boat building, sail making, water dependent transportation ware housing and other clean industrial uses. This land use also accommodates commercial uses similar to the uses that are allowed in the Central Business District. The commercial uses are intended to draw residents and visitors to the area and enjoy the recreational facilities provided by the marina, Catalina Park and the Maylor Point trail. Commercial and industrial uses in this area will need to be sufficiently screened from each other. The Maritime Land Use should consider flexible standards for streets and parking as an incentive to foster development in the area. One of the major challenges in creating this land use category is the intersection of Pioneer Way, Catalina Drive and the security gate to the Seaplane Base. Since the proposed land uses in this has the potential to generate traffic, creative solutions will need to be sought to address this issue. Creating flexible parking standards in this area is also intended to encourage the public to use the access provided by the waterfront trail with alternative modes of transportation.

Industrial Uses

The city currently has a limited amount of developed industrial land. The designation of industrial areas within the city would also provide a basis of agreement with Island County regarding industrial development within the city's UGA located to the north of the city. This area, which is impacted by the noise and accident potential generated by aircraft operations at Ault Field, is well-suited to industrial development while accommodating the Navy's need for compatible uses near the airfield. Several types of industrial use may be contemplated, including uses that may also permit commercial development.

PBP or PIP Planned Business or Industrial Parks. Planned business or industrial parks are intended to promote the development of larger-scaled master planned developments related to office complexes or complex manufacturing facilities. They would preserve or create environmental amenities superior to those generally found in conventional developments. The degree of planning required for such developments would promote a flexibility of development intended to result in a campus or park-like environment.

Industrial. The Industrial district would accommodate certain industrial structures and uses having physical and operational characteristics that could have an adverse impact on adjoining residential or commercial uses. Regulations would be designed to permit those industrial uses that can be operated in a relatively clean, quiet and safe manner compatible with adjoining land uses.

Other Land Uses

Military. Although the Seaplane Base is located entirely within the Oak Harbor city limits, all land use and development within that area is governed directly by the Navy. Historically, the city and the Navy have worked cooperatively to ensure that development meets the needs and expectations of all the parties involved.



Maritime District

ATTACHMENT 3

0 125 250 500 750 1,000 Feet



SBK-14-06

RECEIVED

DEC 24 2014

CITY OF OAK HARBOR
DEVELOPMENT SERVICES DEPARTMENT

WAC 197-11-960 Environmental checklist.

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable: **Maritime Zoning Regulations**
2. Name of applicant: **City of Oak Harbor**
3. Address and phone number of applicant and contact person:
Cac Kamak, 865 SE Barrington Drive, Oak Harbor, WA 98277. Phone: 360-279-4514
4. Date checklist prepared: **December 19, 2014**
5. Agency requesting checklist: **City of Oak Harbor**
6. Proposed timing or schedule (including phasing, if applicable): **A public hearing before the Planning Commission in February 2015 followed by City Council action in March 2015.**
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
The proposed development regulations are expected to guide development in a manner that would further the goals of the Comprehensive Plan. They can be amended periodically to assure the goals are being met.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
No environmental studies are expected to be prepared for this project.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No

10. List any government approvals or permits that will be needed for your proposal, if known.

The City Council of Oak Harbor will take action to adopt the proposed development regulations

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The proposed development regulations implement the goals and intent of the Maritime Land Use designation that was adopted in 2013 with the annual Comprehensive Plan amendment process. The land use designation was created to provide opportunities for maritime uses to locate close to the marina and shoreline. The development regulations are intended to allow water-dependent, water-related and water-enjoyment uses. Since the area governed by these regulations are adjacent to the shoreline the regulations link development standards to the Shoreline Master Program.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The Maritime land use regulations apply to properties located on Catalina Drive adjacent to the Oak Harbor Marina. See attached map.

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other

b. What is the steepest slope on the site (approximate percent slope)?

The area designated as Maritime is mostly flat. Northern portions of the area are slightly higher than the southern portions. The shoreline slopes are probably greater than 15 percent and are stabilized by rip rap.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

The area covered by the Maritime designation is noted as an area of High Liquefaction.

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed.

Indicate source of fill.

The development regulations do not include any regulations or requirements for fill or grading. Individual project proposed in the area may include filling and grading. The project will be required to provide a SEPA checklist for their proposals.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

The adoption of the development regulations will not result in any clearing or construction. However, projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

The area governed by the proposed development regulations is predominately covered with impervious surface currently except for Catalina Park. Projects proposed in this area are unlikely to reduce the amount of impervious surface. However, projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

The development regulations for the maritime zoning do not include measures for erosion control. However, projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

a. **Air**

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

3. **Water**

a. **Surface:**

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

The development regulations cover an area adjacent to the Oak Harbor Bay.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

The development regulations govern development activity adjacent to the water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

Not applicable

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

Not applicable

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

A few feet of land adjacent to the shoreline lies within the 100 yr floodplain. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

b. Ground:

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

Not applicable

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Not applicable

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

The proposed development regulations include performance criteria for “clean industrial uses” and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

4. Plants

a. Check or circle types of vegetation found on the site:

_____ deciduous tree: alder, maple, aspen, other

_____ evergreen tree: fir, cedar, pine, other

- _____ shrubs
- _____ grass
- _____ pasture
- _____ crop or grain
- _____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- _____ water plants: water lily, eelgrass, milfoil, other
- _____ other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

c. List threatened or endangered species known to be on or near the site.

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

5. Animals

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

b. List any threatened or endangered species known to be on or near the site.

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

c. Is the site part of a migration route? If so, explain.

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

d. Proposed measures to preserve or enhance wildlife, if any:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

6. Energy and natural resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

The proposed development regulations include performance criteria for "clean industrial uses". Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

b. Would your project affect the potential use of solar energy by adjacent properties?

If so, generally describe.

The proposed development regulations include performance criteria for "clean industrial uses". Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

c. What kinds of energy conservation features are included in the plans of this proposal?

List other proposed measures to reduce or control energy impacts, if any:

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

7. Environmental health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal?

If so, describe.

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

1) Describe special emergency services that might be required.

Not applicable

2) Proposed measures to reduce or control environmental health hazards, if any:

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

3) Proposed measures to reduce or control noise impacts, if any:

The proposed development regulations include performance criteria for “clean industrial uses”. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

8. Land and shoreline use

a. What is the current use of the site and adjacent properties?

The area governed by the proposed regulations currently has a Marina parking lot, storage sheds, boat storage, boat repair, Yacht club and a public park.

b. Has the site been used for agriculture? If so, describe.

No

c. Describe any structures on the site.

The area governed by the proposed regulations currently has a Marina parking lot, storage sheds, boat storage, boat repair, Yacht club and a public park.

d. Will any structures be demolished? If so, what?

No

e. What is the current zoning classification of the site?

The current zoning classification for the site is Public Facilities.

f. What is the current comprehensive plan designation of the site?

Maritime

g. If applicable, what is the current shoreline master program designation of the site?

Maritime

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

The property is designated as a "High Liquefaction" area

i. Approximately how many people would reside or work in the completed project?

Not applicable

j. Approximately how many people would the completed project displace?

Not applicable

k. Proposed measures to avoid or reduce displacement impacts, if any:

Not applicable

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

The development regulations proposed have provisions for the types of use allowed in the district and the requirements to buffer from adjoining uses. Uses proposed in this district were selected to be compatible with each other and support the intent of the Comprehensive Plan Land Use designations. Residential uses are prohibited in this district to eliminate potential impacts.

9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

Not applicable

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

Not applicable

c. Proposed measures to reduce or control housing impacts, if any:

Residential uses are prohibited in this district.

10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

The proposed code will permit structures to 35 feet and can go up to 55 feet for water dependent uses.

b. What views in the immediate vicinity would be altered or obstructed?

The adoption of the development regulations will not impact views but individual project proposals in the future may. If the proposal is adjacent to the shoreline, a view study will be required as part of the review against the Shoreline Master Program.

c. Proposed measures to reduce or control aesthetic impacts, if any:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals. If the proposal is adjacent to the shoreline, a view study will be required as part of the review against the Shoreline Master Program.

11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

Not applicable

b. Could light or glare from the finished project be a safety hazard or interfere with views?

Not applicable

c. What existing off-site sources of light or glare may affect your proposal?

Not applicable

d. Proposed measures to reduce or control light and glare impacts, if any:

Not applicable

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

The area governed by the proposed regulation includes a public park and a trail adjacent to the shoreline.

b. Would the proposed project displace any existing recreational uses? If so, describe.

The adoption of the development regulation will not impact any existing recreation facilities, however, individual project proposals may. The proposals will need to address the impacts on these facilities. The City's adopted plans will require developments in this area to maintain these recreational facilities and in some instances will require enhancements. It is unlikely that the existing recreational uses will be displaced. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

The proposals will need to address the impacts on these facilities. The City's adopted plans will require developments in this area to maintain these recreational facilities and in some instances will require enhancements. It is unlikely that the existing recreational uses will be displaced. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

13. Historic and cultural preservation

a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

Unknown or not determined at this time.

b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

Unknown or not determined at this time.

c. Proposed measures to reduce or control impacts, if any:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

14. Transportation

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

The area governed by the proposed regulations is served by SE Pioneer Way and Catalina Drive. The area is currently a dead end since streets do not currently run through it.

b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Yes

c. How many parking spaces would the completed project have? How many would the project eliminate?

The adoption of the proposed regulations will not impact the number of parking spaces in the area. The proposed regulation does take into account the limitation on parking and does not require new uses to provide parking similar to the Central Business District regulations.

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

Unknown or not determined at this time.

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Unknown or not determined at this time.

f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

Unknown or not determined at this time.

g. Proposed measures to reduce or control transportation impacts, if any:

The proposed regulations does take into account the limitation on parking and does not require new uses to provide parking similar to the Central Business District regulations.

15. Public services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

Developments in this area will require public services. The extent of the needs will be dependent on the uses that are proposed.

b. Proposed measures to reduce or control direct impacts on public services, if any.

Developments will be required to build to the City's Building Code requirements and other construction code requirements.

16. Utilities

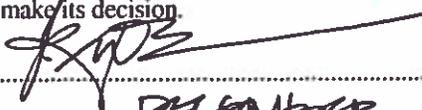
a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Unknown or not determined at this time.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Date Submitted: DECEMBER, 24, 2014

TO BE COMPLETED BY APPLICANT

EVALUATION FOR
AGENCY USE ONLY

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposed development regulations include performance criteria for "clean industrial uses" and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

Proposed measures to avoid or reduce such increases are:

The proposed development regulations include performance criteria for "clean industrial uses" and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposed development regulations include performance criteria for "clean industrial uses" and prohibit uses that can have byproducts and emission to air or water. Therefore uses permitted in this area are not intended to affect plants, animals, fish and marine life. However, projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

3. How would the proposal be likely to deplete energy or natural resources?

The proposed development regulations include performance criteria for "clean industrial uses" and prohibit uses that can have byproducts and emission to air or water. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

Proposed measures to protect or conserve energy and natural resources are:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

The proposed development regulations include performance criteria for "clean industrial uses" and prohibit uses that can have byproducts and emission to air or water. Projects in this area will need to meet all the City's adopted codes and regulations which are designed to reduce or prevent impacts to environmentally sensitive areas. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

Proposed measures to protect such resources or to avoid or reduce impacts are:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Projects proposed in this area are likely to be within 200 feet of the shoreline and will be required to obtain a Shoreline Substantial Development Permit. The proposed regulations link development review to the Shoreline Master Program and are intended to assure that development proposals are compatible with shoreline uses.

Proposed measures to avoid or reduce shoreline and land use impacts are:

Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposed regulation are based on the Maritime Land Use designation that recognizes that uses proposed here can create transportation issues due to its proximity to the security gates to the Seaplane Base and that the area is a dead end with no through traffic. The code relies on the promotion and encouragement of alternate modes of transportation and public transit to fill the gap.

Proposed measures to reduce or respond to such demand(s) are:

The proposed regulation does take into account the limitation on parking and does not require new uses to provide parking similar to the Central Business District regulations. Projects proposed in the area will be required to provide a SEPA checklist (if not exempt) and will be required to meet all permit requirements of the state and local regulations for their proposals.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposed regulations incorporate uses from the Shoreline Master Program and the Central Business District to create a Maritime district that is intended to provide opportunity for commerce and development. The regulations include necessary links to the Shoreline Master Program and its requirements to assure that development meets the established standards for environmental protection and mitigation. Development review will follow established processes that will allow local, state and federal review when applicable.

DETERMINATION OF NON-SIGNIFICANCE

Description of proposal This is a SEPA determination for the addition of zoning regulations to the City of Oak Harbor's Zoning Ordinance for the Maritime Zoning District. The proposed code establishes the purpose and intent of the new zoning district, permitted uses, accessory uses, conditional uses, prohibited uses, density provisions, and conditions governing uses.

Proponent City of Oak Harbor

Location of proposal City of Oak Harbor Marina uplands

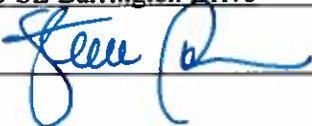
Lead Agency City of Oak Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

X This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by August 31, 2015.

Responsible Official: Steve Powers, AICP Position/Title: Development Services Director
Phone: 279-4511

Address 865 SE Barrington Drive Date August 12, 2015

Signature 

This determination of non-significance shall be final unless otherwise modified after the comment period, and/or appeal is made and perfected within fourteen days of the date of action set out above.

Wireless Facilities Modification

Public Hearing

City of Oak Harbor Planning Commission Report

Date: September 22, 2015
Subject: Wireless Facilities Modifications
– Code Amendment

FROM: Dennis Lefevre, AICP, Senior Planner

PURPOSE

This report continues the Planning Commission review of the draft ordinance and will allow opportunity for public comment during the public hearing.

BACKGROUND

In 2012 the US Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012”. Section 6409 of this Act (a.k.a. the “Spectrum Act”) has mandated that “local governments approve, and *cannot deny*, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station.” The purpose of this act is to facilitate and expedite the deployment of equipment and infrastructure to meet the demand for wireless capacity. Attachment 1 provides the full text of Section 6409. The Federal Communications Commission issued a report and order on October 21, 2014 clarifying and implementing statutory requirements included in Section 6409. The full text of this report and order may be found at <https://www.fcc.gov/document/wireless-infrastructure-report-and-order>.

An amendment to the Oak Harbor Municipal Code (OHMC) is necessary to accommodate the Spectrum Act’s requirements. This amendment is anticipated to create a new Chapter (19.30) in the OHMC titled “Wireless Facilities Modifications.”

DISCUSSION

Chapter 19.29, OHMC (Wireless Communications Facilities – Attachment 2) establishes locations and options for wireless facilities including: micro facilities¹; mini facilities²; monopole I³; and monopoles II⁴. Chapter 19.29 focuses primarily on the construction of new facilities, while this chapter permits collocation of wireless facilities on existing structures, it does not provide an expedited application and review process nor provide for mandatory approval if specific criterion are not met.

Creation of Chapter 19.30 is a legislative action and is consistent with goals and policies established in the City of Oak Harbor Comprehensive Plan (November 2014) and serves to implement Goal 2 and policy 2d of the Utility Element.

¹ A micro facility is an attached wireless communication facility which consists of antennas equal to or less than four feet in height and with an area not more than 580 square inches.

² A mini facility is an attached wireless communication facility which consists of antennas equal to or less than 10 feet in height and with an area not more than 50 square feet.

³ A monopole I is a wireless communications facility which consists of a support structure (maximum 60 feet in height) and antenna equal to or less than 15 feet in height.

⁴ A monopole II is a wireless communication facility which consists of a support structure (maximum 150 feet in height) and antenna equal to or less than 15 feet in height.

Utilities Goal 2: *Process permit requests for utilities in a fair and timely manner to ensure predictability.*

Utilities Policy 2d: *The City should review and amend existing regulations as necessary to provide clear and objective standards for maintenance, repair, installation and replacement of utilities. Such changes shall be consistent with other Goals and Policies of the Comprehensive Plan for construction practices, restoration of City property/right-of-way, environmental protection and oak tree preservation.*

This expedited review is contingent upon the determination that the modification does not substantially change the physical dimensions of such tower or base station. Substantially change is defined as:

- a) The proposed facilities modification would not increase the height of the eligible support structure by more than ten percent (10%), or twenty (20) feet, whichever is greater; or
- b) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

A modification meeting these criteria is also exempt from the requirements of the State Environmental Policy Act (RCW 43.21C.0384).

This amendment establishes application submittal requirements, permit classification, timing for permit review, and the approval process. Following adoption of this amendment, Development Services staff will prepare an application based on the new Chapter 19.30 guidelines and requirements. Staff will also amend Schedule A of the Master Fee Schedule to include this application and review fee. The proposed Chapter 19.30 is Attachment 3.

This amendment is categorically exempt from the State Environmental Policy Act (WAC 197-11-800(19)). The following steps represent a proposed schedule for this code amendment:

- 9/22 PC Public Hearing
- 9/23 CC Workshop
- 10/20 CC Public Hearing/Adoption

RECOMMENDATION

1. Conduct the public hearing and invite comments from the public and interested citizens on this code amendment.
2. Revise proposed amendment, as necessary.
3. Forward a recommendation to the City Council for approval of draft Ordinance 1744, Wireless Facilities Modifications.

ATTACHMENTS

1. Section 6409 of the Spectrum Act
2. Chapter 19.29, OHMC, Wireless Communications Facilities
3. Proposed Ordinance No. 1744 (Wireless Facilities Modifications)

47 USC 1455.

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

§ 1455. Wireless facilities deployment

(a) FACILITY MODIFICATIONS.—

(1) In General - Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible Facilities Request - For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves:

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) Applicability of Environmental Laws - Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

(b) FEDERAL EASEMENTS AND RIGHTS-OF-WAY

(1) Grant - If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement or right-of-way to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, and maintain wireless service antenna structures and equipment and backhaul transmission equipment, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, an easement or right-of-way to perform such installation, construction, and maintenance.

(2) Application - The Administrator of General Services shall develop a common form for applications for easements and rights-of-way under paragraph (1) for all executive agencies that shall be used by applicants with respect to the buildings or other property of each such agency.

(3) Fee

(A) In general, notwithstanding any other provision of law, the Administrator of General Services shall establish a fee for the grant of an easement or right-of-way pursuant to paragraph (1) that is based on direct cost recovery.

(B) Exceptions - The Administrator of General Services may establish exceptions to the fee amount required under subparagraph (A)—

- (i) in consideration of the public benefit provided by a grant of an easement or right-of-way; and

(ii) in the interest of expanding wireless and broadband coverage.

(4) Use of fees collected - Any fee amounts collected by an executive agency pursuant to paragraph (3) may be made available, as provided in appropriations Acts, to such agency to cover the costs of granting the easement or right-of-way.

(c) MASTER CONTRACTS FOR WIRELESS FACILITY SITINGS

(1) In general - notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, and not later than 60 days after February 22, 2012, the Administrator of General Services shall—

(A) Develop 1 or more master contracts that shall govern the placement of wireless service antenna structures on buildings and other property owned by the Federal Government; and

(B) In developing the master contract or contracts, standardize the treatment of the placement of wireless service antenna structures on building rooftops or facades, the placement of wireless service antenna equipment on rooftops or inside buildings, the technology used in connection with wireless service antenna structures or equipment placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) Applicability - The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a wireless service antenna structure on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) Application - The Administrator of General Services shall develop a common form or set of forms for wireless service antenna structure siting applications under this subsection for all executive agencies that shall be used by applicants with respect to the buildings and other property of each such agency.

(d) EXECUTIVE AGENCY DEFINED - In this section, the term “executive agency” has the meaning given such term in section 102 of title 40.
(Pub. L. 112–96, title VI, § 6409, Feb. 22, 2012, 126 Stat. 232.)

Chapter 19.29

WIRELESS COMMUNICATIONS FACILITIES

Sections:

- 19.29.010 Purpose.**
- 19.29.020 Development standards for micro facilities.**
- 19.29.030 Development standards for mini facilities.**
- 19.29.040 Development standards for macro facilities.**
- 19.29.050 Development standards for monopole I.**
- 19.29.060 Development standards for monopole II.**
- 19.29.070 Additional permit criteria for monopole I and monopole II.**
- 19.29.080 Exemption.**
- 19.29.090 Obsolescence.**

19.29.010 Purpose.

In addition to the general purposes of the comprehensive plan and this title, this chapter is included in order to provide for a wide range of locations and options for wireless communications providers while minimizing the unsightly characteristics associated with wireless communications facilities and to encourage creative approaches in locating wireless communications facilities which will blend in with the surroundings of such facilities. (Ord. 1555 § 12, 2009).

19.29.020 Development standards for micro facilities.

- (1) Micro facilities are permitted in all zones.
- (2) A micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures; provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.
- (3) Antennas equal to or less than four feet in height (except omni-directional antennas which can be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omni-directional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
- (4) The micro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.
- (5) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(6) In single-family residential (PRE, R-1 and R-2) zones, micro facilities for a specific wireless provider shall be separated by a distance equal to or greater than 1,320 linear feet from other micro facilities of the same wireless provider. (Ord. 1555 § 12, 2009).

19.29.030 Development standards for mini facilities.

(1) Mini facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Mini facilities shall comply with the height limitation specified for all zones except as follows: Omni-directional antennas may exceed the height limitation by 10 feet or, in the case of nonconforming structures, the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and they blend in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1555 § 12, 2009).

19.29.040 Development standards for macro facilities.

(1) Macro facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The macro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Macro facilities shall comply with the height limitation specified for all zones, except as follows: Omni-directional antennas may exceed the height limitation by 15 feet, or, in the case of nonconforming structures, the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming

structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1555 § 12, 2009).

19.29.050 Development standards for monopole I.

- (1) Monopole I facilities are only permitted in the industrial (I) zone.
- (2) Monopole I facilities are permitted in community commercial (C-3), highway service commercial (C-4), highway corridor commercial (C-5), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a conditional use permit.
- (3) Monopole I facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.
- (4) Antennas equal to or less than 15 feet in height or up to four inches in diameter may be a component of a monopole I facility. Antennas which extend above the wireless communications support structure shall not be calculated as part of the height of the monopole I wireless communications support structure. For example, the maximum height for a monopole I shall be 60 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas 75 feet (60 feet plus 15 feet).
- (5) Co-location on an existing support structure shall be permitted. Macro facilities are the largest wireless communications facilities allowed on monopole I.
- (6) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.
- (7) Monopole I facilities shall be landscaped in conformance with Chapter 19.46 OHMC.
- (8) Monopole I facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line. (Ord. 1555 § 12, 2009).

19.29.060 Development standards for monopole II.

- (1) Monopole II facilities are only permitted in the industrial (I) zone; provided the wireless communications support structure shall be designed to accommodate two or more wireless communications facilities.
- (2) Monopole II facilities are permitted in highway service commercial (C-4), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a conditional use permit.

(3) Monopole II facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.

(4) Monopole II facilities which exceed 60 feet in height or are located within 300 feet of a residential zone shall require a conditional use permit.

(5) Co-location of wireless communications facilities on an existing support structure shall be permitted.

(6) Macro facilities are the largest permitted wireless communications facilities allowed on a monopole II facility. Antennas which extend above the monopole II wireless communications support structure shall not be calculated as part of the height of the wireless communications support structure. For example, the maximum height for a monopole II facility shall be 150 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas 165 feet (150 feet plus 15 feet).

(7) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.

(8) Monopole II facilities shall be landscaped in conformance with Chapter 19.46 OHMC.

(9) Monopole II facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line.

(10) Monopole II facilities shall be separated from each other by a distance equal or greater than 1,320 feet. (Ord. 1555 § 12, 2009).

19.29.070 Additional permit criteria for monopole I and monopole II.

In addition to the permit criteria specified in Chapters 19.48 and 19.67 OHMC, the following specific criteria shall be met before a site plan review or conditional use permit can be granted:

(1) Antennas may not extend more than 15 feet above their supporting structure, monopole, building or other structure.

(2) Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment. Wireless communications towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(3) Accessory equipment facilities used to house wireless communications equipment should be located within buildings or placed underground when possible. When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped in conformance with Chapter 19.46 OHMC.

(4) No equipment shall be operated so as to produce noise in levels above 45 dB as measured from the nearest property line on which the attached wireless communications facility is located.

(5) In any proceeding regarding the issuance of site plan review or a conditional use permit under the terms of this chapter, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications Commission regulations concerning such emission.

(6) Towers, antennas or other objects that penetrate the 100:1 angle slope criteria established in Federal Aviation Regulation (FAR) Part 44 (Sections 77.13(a)(1) and 77.13(a)(2)(I), respectively) shall be reviewed for compatibility with airport operations. No tower, antenna or other object shall constitute a hazard to air navigation, interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field. (Ord. 1555 § 12, 2009).

19.29.080 Exemption.

The following are exempt from the requirement of a conditional use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, so long as there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this chapter. (Ord. 1555 § 12, 2009).

19.29.090 Obsolescence.

A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair. (Ord. 1555 § 12, 2009).

ORDINANCE NO. 1744

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 19.30 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "WIRELESS FACILITIES MODIFICATIONS" RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS FACILITIES; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the "1996 Act"), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. §1455(a)); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the "FCC") to prescribe such rules and regulations as may be necessary in the public interest to carry out the

provisions of the 1996 Act and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*in re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above-described proceeding (the "Report and Order" or "Order") clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC's review processes under the National Environmental Policy Act of 1969 ("NEPA") and section 106 of the National Historic Preservation Act of 1966 ("NHPA"), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) by adding new Subpart CC §1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station ("Eligible Facility Request Rules"); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60-day shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective ninety (90) days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the Eligible Facility Request Rules; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies to allow for a sixty (60) day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, on the 22nd day of September, 2015, the Planning Commission held a duly noticed public hearing related to the proposed interim development and zoning regulations set forth in the proposed ordinance; and

WHEREAS; the City Council considered the proposed development and zoning regulations on the 20th day of October, 2015; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order to bring the City's development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 19.30 entitled "Wireless Facilities Modifications" to the Oak Harbor Municipal Code to read as follows:

CHAPTER 19.30
WIRELESS FACILITIES MODIFICATIONS

Sections:

19.30.010	Title
19.30.020	Adoption of Findings and Conclusions
19.30.030	Purpose and Intent
19.30.040	Definitions
19.30.050	Applicability – Relationship to Other Rules and Regulations
19.30.060	Permit Classification
19.30.070	Application Submittal Requirements
19.30.080	Review of Application; Approval
19.30.090	Substantial Change Criteria
19.30.100	Nonconforming Structure; Termination
19.30.110	Enforcement

19.30.010 Title. This chapter shall be known and referred to as the "Wireless Facilities Modification Code" or "WFM Code". Unless the context indicates otherwise, a reference herein to "this code" or "this chapter" shall mean and refer to the Wireless Facilities Modification Code.

19.30.020 Adoption of Findings and Conclusion. The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

19.30.030 Purpose and Intent. The purpose and intent of this chapter are to:

- (1) To implement §6409 of the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. §1455(a)) which requires the City to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;
- (2) To implement the FCC rules set forth at 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) new Subpart CC §1.40001 (Wireless Facility Modifications), which rules implement §6409 of the Spectrum Act;
- (3) To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;
- (4) To ensure that application submittal requirements are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible support structure;
- (5) To exempt facilities modifications approval under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;

- (6) To preserve the City's right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical and safety codes and with other laws codifying objective standards reasonably related to health and safety;
- (7) To promote timely decisions under this chapter;
- (8) To ensure that decisions are made consistently and predictably;
- (9) To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c), (State Environmental Policy Act);
- (10) To recognize that Section 6409(a)(1) of the Spectrum Act operates to preempt any provision of the State Environmental Policy Act (RCW Ch. 43.21C) to the extent that any such provision, including RCW 43.21C.030(2)(c), would prohibit a City from approving any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and
- (11) To provide for termination of wireless facilities modifications approved pursuant to this chapter, as nonconforming structures in the event that §6409(a) of the Spectrum Act is found to be unconstitutional or otherwise determined to be invalid or unenforceable and such modifications would otherwise have been in derogation of development regulations in place at the time of receipt of a completed application.

19.30.040 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter, unless the context clearly requires otherwise. Any term or phrase not defined herein shall have the meaning that is given to that term or phrase in Section 19.08 of the Oak Harbor Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory and the word "may" is always discretionary. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

- (1) "Approval authority" is the public official, or designee, who has authority under the Oak Harbor Municipal Code to administratively issue project permit approvals.
- (2) "Applicant" shall mean and refer to the person, and such person's successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.
- (3) "Authorized person" is the person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities

modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the City regarding the application.

- (4) "Base station" shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.
- (a) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (b) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (c) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this chapter, supports or houses equipment described in paragraphs (i) – (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (d) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (a) – (b) above.
- (5) "City" shall mean and refer to the City of Oak Harbor.
- (6) "City Code" shall mean and refer to the codified ordinances of the City.
- (7) "Collocation" shall mean and refer to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (8) "Conceal" or "Concealment" shall mean and refer to eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station.
- (9) "Deemed approved" shall mean and refer to a wireless facilities modification application that has been deemed approved upon the City's failure to act, and has become effective, as provided pursuant to the FCC Eligible Facilities Request Rules.

- (10) "Eligible support structure" shall mean and refer to any existing tower or base station as defined in this chapter, provided that it is in existence at the time the eligible facilities modification application is filed with the City under this chapter.
- (11) "Existing" shall, for purpose of this chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another State, county or local regulatory review process; provided that, a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (12) "Proposed facilities modification" shall mean and refer to a proposal submitted by an applicant to modify an eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and involving:
- (a) collocation of new transmission equipment;
 - (b) removal of transmission equipment; or
 - (c) replacement of transmission equipment.
- (13) "FCC" shall mean and refer to the Federal Communications Commission or its successor.
- (14) "FCC Eligible Facilities Request Rules" shall mean and refer to 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Subpart CC §1.40001 as established pursuant to its Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, or as may be thereafter amended.
- (15) "Site" shall, for towers other than towers in the public rights-of-way, mean and refer to the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (16) "Small cell facility" shall mean and refer to a personal wireless services facility that meets both of the following qualifications:
- (a) Each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
 - (b) Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of

equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

- (17) "Small cell network" shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.
- (18) "Spectrum Act" shall mean and refer to the "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. §1455(a)).
- (19) "Substantial change criteria" shall mean and refer to the criteria set forth in this chapter at OHMC 19.30.090.
- (20) "Transmission Equipment" shall mean and refer to equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (21) "Tower" shall mean and refer to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
- (22) "Wireless facilities modification" shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this chapter to be subject to this chapter and which does not result in a substantial change in the physical dimensions of an eligible support structure.
- (23) "Wireless facilities modification application" or "application" shall, unless the context clearly requires otherwise, mean and refer to a written document submitted to the City pursuant to this chapter for review and approval of a proposed facilities modification.
- (24) "Wireless facilities modification permit" or "permit" shall, unless the context clearly requires otherwise, mean and refer to a written document issued by the approval authority pursuant to this chapter approving an eligible facilities modification application.

19.30.050 Applicability – Relationship to Other Rules and Regulations.

- (1) Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding any other provisions in the City Code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities

modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control. In the event that any part of an application for project permit approval includes a proposed wireless facilities modification, the proposed wireless facilities modification portion of the application shall be reviewed under the provisions of this chapter. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this chapter and may be subject to review under other applicable provisions of the City Code.

- (2) Non-conforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal non-conforming, structure at the time a completed eligible wireless facilities modification application is filed with the City. To the extent that the non-conforming structures and use provisions of the City Code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.
- (3) Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.
- (4) First Deployment; Base Station. This chapter shall not apply to a proposed wireless facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.
- (5) Interpretation. Interpretations of this chapter shall be guided by Section 6409 of the Spectrum Act; the FCC Eligible Facilities Request Rules, the FCC's Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153; and Sections 19.30.020 (Adoption of Findings and Conclusions) and 19.30.030 (Purpose and Intent) of this Code.
- (6) SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible wireless facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if:
 - (a) The proposed wireless facilities modification would not increase the height of the eligible support structure by more than ten percent (10%), or twenty (20) feet, whichever is greater; or
 - (b) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the

structure more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; (See RCW 43.21C.0384 and WAC 197-11-800(25))

- (c) The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.
- (7) Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally acceptable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

19.30.060 Permit Classification. An eligible wireless facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority.

19.30.070 Application Submittal Requirements; Determination of Completeness.

- (1) Purpose. This section sets forth the submittal requirements for an eligible wireless facilities modification application. The purpose of the submittal requirements is to ensure that the City has all information and documentation that is reasonably necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modification.
- (2) Submittal Requirements. No eligible wireless facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority:
 - (a) The following contact information for the Authorized Person:
 - (i) Name;
 - (ii) Title;
 - (iii) Mailing Address;
 - (iv) Phone Number; and
 - (v) Electronic Mail Address (optional).
 - (b) The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of Applicant.
 - (c) If a corporation, the name and address of the registered agent of Applicant in Washington State, and the state of incorporation of Applicant.

- (d) If Applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
- (e) An assertion that the proposed wireless facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (f) If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:

An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed wireless facilities modification. If the eligible support structure is located in a public right-of-way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right-of-way.

- (g) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required:

Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

- (h) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City or other applicable zoning or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

- (i) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, the following shall be required:

A copy of the document (e.g., CUP or SUP) setting forth such pre-existing restrictions or requirements together with a certification that the proposed wireless facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width,

addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.

- (j) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

- (k) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

- (l) If the applicant proposes a modification to an eligible support structure that will (a) include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required:

A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in elevation and dimensions of the new or replacement transmission equipment. The City may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

- (m) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed collocation, removal, or replacement of

transmission equipment and conforms to applicable code requirements. The City may retain the services of an independent technical expert to review, evaluate and provide an opinion regarding the applicant's demonstration of necessity.

- (n) If the applicant proposes a modification to a tower, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

- (i) The number and type of antennas that can be accommodated;
- (ii) The basis for the calculation of capacity; and
- (iii) A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.

The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

- (o) If the applicant proposes a modification to a base station, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

- (p) If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:

A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting, (a) the location, elevation and dimensions of the existing eligible support structure, (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment, (d)

the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each, (e) any proposed modification to the eligible support structure, (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and (g) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

- (q) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.
- (3) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the Development Services Director.
- (4) When Received. An eligible wireless facilities modification application, and any supplemental submittals, shall be deemed received by the City upon the date such application, or supplemental submittal, is filed with the Development Services Department. An application, and any supplemental submittals, must be filed in person during regular business hours of the City and must be accompanied by the applicable permit review fee(s). Any application received by the City without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.
- (5) Completed Application; Determination; Tolling.
- (a) Determination of Completeness. The approval authority shall, within thirty (30) days of receipt of the application, review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the application submittal requirements set forth at OHMC 19.30.070(2) of this chapter, unless waived by the Development Services Department pursuant to OHMC 19.30.070(3). The determination of completeness shall not preclude the Development Services Department from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed wireless facilities modification is modified by applicant, as determined by the Development Services Director.
- (b) Incomplete Application. The Development Services Director shall notify the applicant within thirty (30) days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.

- (c) Tolling Timeframe for Review. The application review period begins to run when the application is received, and may be tolled when the approval authority determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the Development Services Director and applicant. The timeframe for review is not tolled by a moratorium on the review of eligible facility modification applications.
- (i) To toll the timeframe for review for incompleteness, the Development Services Director must provide written notice to the applicant within thirty (30) days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in OHMC 19.30.070(2) and any supplemental information requested by the approval authority that is reasonably related to determining whether the proposed wireless facilities modification will substantially change the physical dimension of an eligible support structure.
 - (ii) The timeframe for review begins running again when the City is in receipt of applicant's supplemental submission in response to the Development Services Director's notice of incompleteness.
 - (iii) Following a supplemental submission, the a Development Services Department shall have ten (10) days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (5)(c)(iii). Except as may be otherwise agreed to by the applicant and the Development Services Department, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (iv) A notice of incompleteness from the City will be deemed received by the Applicant upon the earlier of, personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three (3) days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.
- (d) Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed wireless facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a

new application review period; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

19.30.080 Review of Application; Approval.

- (1) Review of Application. The Development Services Department shall review an eligible wireless facilities modification application to determine if the proposed facilities modification is subject to this chapter, and if so, if the proposed wireless facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
- (2) Timeframe for Review. Within sixty (60) days of the date on which the City receives an eligible wireless facilities modification application, less any time period that may be excluded under the tolling provisions of this chapter or a tolling agreement between the applicant and the Development Services Department, the Department shall approve the application and contemporaneously issue a wireless facilities modification permit unless the Development Services Department determines that the application is not subject to this chapter, or the proposed wireless facilities modification will substantially change the physical dimension of an eligible support structure.
- (3) Approval; Denial. A wireless facilities modification application shall be approved, and a wireless facilities modification permit issued, upon determination by the Development Services Department that the proposed facilities modification is subject to this chapter and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the Development Services Department that the proposed wireless facilities modification is not subject to this chapter or will substantially change the physical dimensions of an eligible support structure. A proposed wireless facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.
- (4) Deemed Approved Application. An application that has been deemed approved shall be and constitute the equivalent of a wireless facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner as a wireless facilities modification permit issued pursuant to this chapter.
- (5) Denial of Application. A denial of a wireless facilities modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
- (6) Code Requirements. Any wireless facilities modification permit issued pursuant to this chapter, and any application that has been deemed approved, shall be and is conditioned upon compliance with any generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and

safety. Violation of any such applicable code or standard shall be deemed to be a violation of the wireless facilities modification or deemed approved application.

- (7) Term of Wireless Facilities Modification Permit. A wireless facilities modification permit issued pursuant to this chapter, and any deemed approved application, shall be valid for a term of one hundred eighty (180) days from the date of issuance, or the date the application is deemed approved.
- (8) Remedies. Notwithstanding any other provisions in the City Code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the City retain any and all remedies that are available at law or in equity, including by way of example and not limitation, those remedies set forth in the FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy, shall be brought within thirty (30) days following the date of denial or following the date of notification of the deemed approved remedy. (Note: The FCC Report and Order in *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Par's 234-236, provides that the City shall have thirty (30) days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have thirty (30) days from the date of denial to bring a legal action in a court of competent jurisdiction challenging a denial of the application.)

19.30.090 Substantial Change Criteria. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;

Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. (Note: The FCC Report and Order in *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Par's 234-236, provides that the City shall have thirty (30) days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have thirty (30) days from the date of denial to bring a legal action in a court of competent jurisdiction challenging a denial of the application.)

- (2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower

more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and the base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;
- (a) it entails any excavation or deployment outside the current site;
 - (b) it would defeat the concealment elements of the eligible support structure; or
 - (c) it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section OHMC 19.30.090.

(Note: The FCC rules refer to the date of passage of the Spectrum Act. The Spectrum Act was enacted on February 22, 2012. Presumably the FCC intended to refer to the date of enactment as the date of passage.)

19.30.100 Non-conforming Structure; Termination.

- (1) Application. The provisions of this section OHMC 19.30.100 shall apply to any facilities modification constructed, installed, placed or erected pursuant to a wireless facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed wireless facilities modification application was filed.
- (2) Non-conforming Structure Determination. A facilities modification to which this section applies is subject to termination as a non-conforming structure upon the following conditions:
- (a) Final, Non-Appealable Decision. An appellate court, in a final and non-appealable decision, determines that §6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and
 - (b) Notice of Non-Conforming Structure Determination. The City provides written notice to the applicant that the City has determined that the facilities modification

did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed wireless facilities modification application was filed and that the facilities modification constitutes a non-conforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.

- (3) Conformance; Termination. Upon receipt of notice of the City's non-conforming structure determination, applicant shall abate the non-conformance by either, confirming the site to the zoning and development regulations in effect at the time the completed wireless facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one (1) year from the date of the City's notice of the non-conforming structure determination.
- (4) Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.
- (5) Administrative Appeal. The applicant, or its successors or assigns, may appeal the City's determination of non-conformance to the City Hearing Examiner by filing a notice of appeal within ten (10) calendar days of the date of the determination of non-conformance, excluding holidays.

19.30.110 Enforcement; Violation. Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth under Chapter 19.100, Oak Harbor Municipal Code.

Section Two. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section Three. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication.

PASSED by the City Council this _____ day of _____, 2015.

Veto ()
 Approve ()

THE CITY OF OAK HARBOR

By _____
 Scott Dudley, Mayor

Dated: _____

Attest:

Anna Thompson, City Clerk

Approved as to Form:

Nikki Esparza, City Attorney

Published: _____

2016
Comprehensive Plan
Update

Public Meeting

**City of Oak Harbor
Planning Commission Report**

Date: September 22, 2015
Subject: 2016 Comprehensive Plan
Major Update

FROM: Cac Kamak, AICP
Senior Planner

Discussions on the 2016 update to the City's Comprehensive Plan is an ongoing agenda item at the Planning Commission. At the last meeting, census information related to employment statistics in Oak Harbor was presented. Staff is continuing to prepare draft documents that will bring together the ideas, information and policies that have been discussed in the last few years. Staff will continue to discuss the update with the Planning Commission as this moves forward.