

City of Oak Harbor City Council Meeting

Agenda for

March 23, 2010
6:00 p.m.



Oak Harbor City Council
Tuesday, March 23, 2010, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak. **Thank you for participating in your City Government!**

CALL TO ORDER

INVOCATION Karen Hansen (Interim), Lutheran Church, ELCA

ROLL CALL

MINUTES 2/27/10 Council Retreat, 3/2/10 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Introduction of "Caught in the Act" Youth Award Winners.
2. Employee Recognitions – Rhonda Haines Severns – 30 years, Butch Reinstra – 30 years.
3. Proclamation – United States 2010 Census.
4. Proclamation – Lions Club Day.
5. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

6. Consent Agenda:

Page 68

- a. Noise Permit – Holland Happening.

Page 75

- b. Noise Permit – Whidbey Island Tea Party.

Page 81

- c. Noise Permit – Filipino Christian Fellowship.

Page 87

- d. Change Fund Resolution.

Page 90

- e. Sale of Boat Vessel ID# WN 0971 RG, a 1974 American sail boat.

Page 99

- f. Sale of Boat Vessel ID# WN 2961 P, a 1969 Fairline power boat.

Page 110

- g. Sale of Boat Vessel ID# CF 457 CU, a power boat.

Page 116

- h. Bid Award – Regenerative Sweeper.

- i. Approval of Accounts Payable Vouchers (Pay Bills).

Page 118

7. Public Hearing – Proposed Ordinance Banning Public Nudity.

Page 125

8. Public Hearing – Adult Entertainment Licensing and Regulation Ordinance.

Page 156

9. Interim Ordinance – Adult Entertainment Facilities Overlay Zone.

Page 173

10. Authorization to negotiate Scope of Work with Carollo Engineers – Waste Water Treatment Facility.

11. City Administrator's Comments.

12. Councilmembers' Comments.

- Standing Committee Reports.

13. Mayor's Comments.

ADJOURN

*"It is amazing what you can accomplish if you do not care who gets the credit."
-- Harry S. Truman*

If you have a disability and are in need of assistance, please contact the City Clerk at (360) 279-4539 at least two days before the meeting.

IN ATTENDANCE

Mayor Jim Slowik
Six members of the City Council,
Rick Almberg
James M. Campbell
Scott Dudley
Danny Paggao
Jim Palmer
Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Cathy Rosen, Public Works Director
Steve Powers, Development Services Director
Mike McIntyre, Senior Services Director
Mark Soptich, Fire Chief
Rick Wallace, Police Chief
Mack Funk, Harbormaster
Doug Merriman, Finance Director
Renee Recker, Executive Assistant

A continental breakfast was held from 8:15 a.m. - 9:00 a.m.

City Administrator Schmidt welcomed those present and noted that Councilmember Munns was unable to attend the workshop as she was out of town.

➤ **Opening Comments & Introductions – City Administrator**

Mr. Schmidt introduced Retreat Facilitator, David Mercier and provided a brief background of his experience. He added the purpose of the retreat is to give the new and existing Council members an opportunity to discuss goals and objectives, among other topics that come up in the course of discussion in a less formal environment. He added retreats are scheduled on two year increments.

➤ **Facilitator David Mercier – “Refresher Discussion” on 2008 Retreat**

Mr. Mercier advised the Council the retreat format would be relaxed and encouraged questions at any point during the discussion. He discussed the 2008 retreat and the work accomplished during that session. He suggested the Council review the previously stated City strengths, weaknesses, opportunities and threats and make a determination whether an update to those lists should be made.

The Council discussed the strengths and their purpose. General discussion was held regarding the condition of City facilities, local traffic, open attitudes, the level of training of our first responders, emergency preparedness, the City’s fiscally conservative strategies, an increase in tourism revenue and public perception of the Council.

The Council agreed unanimously to remove *Public attitude open to new solutions*, from the Strengths list and place it on the Opportunities list. *Open attitudes* were removed from the Strengths list. With regard to *Local traffic – non issue*, it was pointed out the City doesn't have influence or control over SR 20 as that is driven by the Department of Transportation. Discussion followed regarding community impact of traffic on SR 20 and the fact that the City will be working on arterial streets in the future. It was agreed upon consensus to remove *Local traffic – non issue* from the strengths list.

To summarize: the Council agreed upon consensus to **change** the “good” description of *City facilities* as they may no longer be considered good, **add** *Strong emergency preparedness, Fiscal conservativeness, Tourism revenue up, and Remain focused on strategy and goals*, and **remove** *Openness to new solutions, Open attitudes and Local traffic* from the Strengths list.

The Council turned their review to the Weakness list.

Councilmember Almberg noted a typo on *Lack of landfill development* – should be *infill development*. Councilmember Dudley noted the wastewater treatment facility will be more than a remodel.

General discussion followed regarding the list and it was agreed unanimously to **remove** the *Sign Ordinance [completed], Demographics (aging population), New Mayor, Administration transition, Unbridled growth, Limited vision, Prosecution services, Public apathy and Development too restrictive* from the list. The Council **changed** *Lack of capacity – water & sewer* to *Lack of capacity – water and sewer facilities*. The Council added *Flooding of Saltwater Marsh and Lagoon Facility* to the list.

General discussion followed regarding the public perception that development is too restrictive and that City Hall is unfriendly for services. Mayor Slowik noted he recently met with SICBA [Skagit/Island Counties Builders Association] representatives and was told they are happy with the City. He also discussed a pending annexation which will be helpful to the business community.

It was unanimously agreed by Council to **add** *Increase the perception of business friendliness* to the Opportunities list.

The Council turned their review to the Opportunities list.

Discussion followed regarding the items on the list. It was unanimously agreed to **add** *Increase the perception of business friendliness, open to new attitudes, increase the use of Channel 10 for public education, increase the types of communication opportunities* and add “Commuter airline” to airport to the list. It was agreed to **change** *Freund Marsh (divert storm water there)* to *Freund Marsh – expanded use*. It was agreed

to **remove** “*Pearl*” potential, reference to the 2010 Olympics, **delete** “*Tech*” from *Potential workforce* and **move** *Generate and amend reasonable priorities* to the Strengths list.

The Council turned their review to the Threats list.

Discussion followed regarding items on the list. It was unanimously agreed to **remove** *No action or delayed action by Council, Base closure and loss of medical services/providers* from the list. The Council **added** *Salt Water Marsh flooding is an immediate threat with the location of the waste water treatment facility* a weakness.

Council asked the Department Heads present if they had anything to add to the discussion. They had nothing to add.

Amended Strengths, Weaknesses, Opportunities, and Threats are attached as Exhibit A.

The Council took a 15 minute break from 10:30 a.m. to 10:45 a.m.

➤ **Brainstorming Session – Open Forum to Raise Thoughts and Random Ideas**

Mr. Mercier encouraged the Council members to share thoughts and ideas in a free thinking exercise.

General discussion followed regarding options for the “Boyer” property, combining the City/School District facility (bus barn) and then use the current bus barn as a recreational center for the community, providing advance agenda notice for standing committee meetings for all Council members, tape standing committee meetings and broadcast them on Channel 10, funding for streets – especially in the older neighborhoods, lack of funding for infrastructure projects, project priorities, create a formal “parks and recreation” department, park maintenance, the possibility of introducing a maintenance and operations levy for special programs to let the public decide if they want to fund a parks and recreation department, a long-term plan for a new and improved adult activity center (senior center), the re-establishment of a Resource Officer in the high school, the use of shared opportunities – outside of our department, jurisdictions and alternatives available, revisit the municipal pier – day dock, channel dredging, the need for a conference/events center, funding for basic City services, improve the public’s perception of fairness – especially involving standing committee meetings, the possibility of constructing a new jail, sale of city property – the Library Board would like the City to donate City property for a new library site, pursue the development and promotion of a business park on Oak Harbor Road, the possibility of the City having a Facebook page and the possibility of forming a public relations standing committee.

➤ Goal Setting

The Council reviewed the goals list that was generated at the 2008 retreat and discussed each status as follows:

- *42" Stormwater Outfall Design and Permitting Tasks* - the project design is 75% complete, however the construction is not funded. It was noted the state has discontinued the Public Works Trust Fund.
- *Utility Survey* – this project has been completed and is now at the City Council level for review.
- *Waterfront Trail Trailhead* – this project will be completed by the end of this year, it goes out to bid in April.
- *Stormwater Ordinance* – the Illicit Discharge Ordinance is complete and codified.
- *Combine City/School Maintenance Facility* – The School District decided they wanted to keep the school facility where it is. The project is suspended.
- *Pier Project Phase I* – the Uplands Project is at the standing committee level. It is hoped the project will be finished by the end of the calendar year.

The Council took a lunch break from 11:55 a.m. to 12:30 p.m.

➤ Goal setting (continued)

The Council continued their goal setting discussion. The following goals were established:

- Complete the Pioneer Way Improvement Project in a safe and timely manner
- Complete Phase I and begin Phase II of the Marina Project
- Successfully complete and present the Utility Audit to the public
- Complete the site selection for the Wastewater Treatment Plant
- Complete the 42" outfall project
- Search for funding for street overlays
- Complete long-term agreement for the Maylor Point Trail
- Resolve DNR Tideland ownership
- Animal shelter facility
- Goldie Road Annexation Project
- Complete Oak Harbor Street and 7th Avenue intersection
- Economic development overlay zones
- Develop long term plan for channel dredging
- Resolve UGA issues with Island County
- Complete Bayshore Drive connection
- Complete Scenic Heights Trailhead Project
- Establish an Enterprise Zone for Goldie Road

- Establish downtown designation for Green City of Oak Harbor establish permanent marketing plan/tourism for Pioneer Way
- Establish an Adult Entertainment Ordinance
- Establish grinder pump/low pressure standard
- New website

Mr. Mercier asked each Councilmember to choose their three most important items on the list in order to establish priorities:

Councilmember Campbell: Pioneer Way, Marina, Grinder pump/low pressure standard

Councilmember Palmer: Pioneer Way, Marina, 42” Outfall

Councilmember Alberg: Utility Audit, Marina, Pioneer Way

Councilmember Severns: Pioneer Way, Marina, Utility Audit

Councilmember Dudley: Goldie Road Annexation, WWTP site selection, Marina

Councilmember Paggao: Pioneer Way, WWTP site selection, Goldie Road Annexation

Mayor Slowik: Tourism Marketing Plan for Pioneer Way, Animal Shelter facility, Goldie Road Enterprise Zone.

Mr. Mercier discussed the importance of strategic planning to identify goals and then focus on those that have the greatest consensus. Once that is determined, an action plan can be created that focuses on the priorities. The Council created the following action plan:

Project Description	Completion	Assigned Party
Pioneer Way Improvement Project	Q3 – ‘11	Administration
Complete Phase I and begin Phase II of the Marina Project	Q2 – ‘10 Phase I Q1 – ‘11 Phase II	Development Services
Utility Audit	Q2 – ‘11	Public Works/Finance
Wastewater Treatment Plant site selection	Q2 – ‘11	Public Works
Goldie Road Annexation	Q2 – ‘10	Development Services

Council discussion continued regarding the importance of all of the goals and the following estimated completion dates were established:

- Complete the 42" outfall project – 2011
- Animal shelter facility – Q1 – '11
- Establish an Enterprise Zone for Goldie Road – Q4 – '10

The Council agreed to include the tourism marketing plan for Pioneer Way in the Pioneer Way Improvement project.

The Council took a 5 minute break at 1:20 p.m.

➤ **Strategic Financial Plan – Finance Director Merriman**

Finance Director Merriman gave a power point presentation which reviewed revenue, six year revenue projections, real estate property taxes, the City's portion of taxes collected throughout the City, County, State, etc., inflation, sales tax, utility tax, development revenue, the effect of growth rates and the 2011 – 2012 budget process and projections. The power point presentation is attached as Exhibit B.

Mr. Merriman discussed a recent claim submitted by Verizon which relates to the taxability of internet services and intrastate revenue. He noted staff is in the process of getting together with other cities who have received the same claim to see how they are responding. Mr. Merriman added he would keep the Council apprised of the situation as it unfolds.

General Council discussion followed regarding the possibility of partnering with other jurisdictions, special levies, level of services provided, utility taxes and setting dates for upcoming budget workshops. Mr. Merriman advised he will create more performance measures and look at the cost effectiveness of some of the City's programs/projects.

The Council thanked Mr. Merriman for his presentation and discussion.

➤ **Review Council Rules – City Attorney Hite**

City Attorney Hite discussed proposed changes to existing Council Rules of Procedure, attached as Exhibit C.

Ms. Hite addressed questions of Council and discussed quasi-judicial procedures, the appearance of fairness and ex-parte contacts. Discussion points are attached as Exhibit D.

Discussion continued regarding Council rules associated with Standing Committees. Ms. Hite noted there are currently no adopted rules for the committees. The proposed rules are attached as Exhibit E.

Council discussion followed regarding how potential agenda items are forwarded to standing committees, the fact that Council may delegate an item back to a standing committee for further review prior to final Council action. It was agreed upon consensus to remove public comments from the Government Services Agenda. Ms. Hite advised Council she will provide discussion points to Council in the near future.

Ms. Hite discussed proposed Council Rule No. 9, attached as Exhibit F, which pertains to public discussion and the intent of the rule.

Council discussion followed regarding the importance of open government, public comment, current practice and the timing of public comment during meetings.

Ms. Hite advised she would draft language regarding public comment for future consideration.

As the agenda items scheduled for discussion were concluded, Mr. Mercier suggested the Council go around the table and get each Councilmember's comments regarding the retreat.

Councilmember Campbell stated the retreat was well done and he felt the Councilmembers opened up more at this retreat than the last. He suggested that the final product be posted on the board in the Council Chambers with a date completed column to be marked off as projects are completed. The remaining Councilmembers agreed.

Councilmember Paggao stated he was happy with the retreat and the Council is focused on their goals.

Councilmember Palmer stated he was happy with the retreat and appreciated the opportunity.

Councilmember Almberg complemented Mr. Mercier and staff and acknowledged the amount of time and effort spent to make the retreat successful.

Councilmember Severns stated it was great to be able to express his views, brainstorm and thanked staff and Mr. Mercier for their efforts.

Councilmember Dudley noted he was at the last retreat as a visitor and has seen the changes the administration is undertaking to make things happen. He is looking forward to the future.

Mayor Slowik thanked staff for their time and presentations and thanked City Administrator Schmidt for all of this time in putting the retreat together. He also thanked Mr. Mercier for his guidance.

The retreat adjourned at 3:45 p.m.

Karen Crouch, Deputy City Clerk

10

Exhibit A

Strengths – analysis identifies those attributes that are helpful to achieve the organization’s objective.

(Amended on February 27, 2010)

- 5 Good relations with County government, local cities & towns
- 4 Cooperative Council - respectful of each other
- 4 Excellent staff
- 3 Cooperation with Navy unique (spouse employment, ...)
- 3 Beautiful area to live (parks kept clean, ...)
- 3 Teamwork (Council & Staff & Mayor & City Administrator)
- 3 Good relationship with Chamber of Commerce
- 2 Wonderful waterfront
- 2 City Facilities - good (OHPD, City Hall, ICOM, Fire station, PW, Marina, Senior Ctr)
- 2 Service - good city service
- 1 Council Teamwork & Partnership
- 1 Strong economic machine
- 1 Future potential
- 1 Chamber of Commerce
 - Problem solve
 - ~~Local traffic – non-issue~~
 - ~~Open attitudes~~
 - Friendly city
 - Payroll of Navy - presence of Navy
 - Partnership with school district (stadium, modernization, shared properties, IT/phone system, resource officer)
 - Marina
 - Local weather
 - Abundance of outdoor activities (sailing, fishing,)
 - EMS system - good
 - Hospital - good
 - Low crime rate
 - Want to live here
 - Senior Center (+ proximity to pool)
 - Non-profits cooperate with one another
 - Strong, active service organizations (Rotary, Lions, Kiwanis, Soroptimists, etc)
 - Environmentally aware
 - City Planning Dept (walkable design, professionalism, planning more defined, certification of policies, knowledgeable staff)
 - Good drinking water
 - Fire Dept paid on call personnel
 - Long term leadership - OHPD
 - Employee retention
 - Community Diversity

Strengths – continued

~~Public attitude open to new solutions~~

Volunteers

Community Generosity - Giving (churches, citizens)

Strong emergency preparedness

Fiscal conservativeness

Increase in tourism revenue

Remain focused on strategy and goals

Generate and amend reasonable priorities

Weakness - analysis identifies those attributes that are harmful to achieving the organization's objective.
(Amended February 27, 2010)

- 6 Funding
- 4 Traffic
- 3 Economic development (Insufficient funding)
- 3 (Underutilized land) Lack of ~~landfill~~ infill development
- 2 Roads Stormwater infrastructure (Insufficient funding)
- 2 Limited employment opportunities (family wage jobs,
- 2 Strongly held diverse opinions
- 2 Limited Tax base
- 2 Marina (dredging need, slips, location with respect to businesses)
- 1 Youth services (Insufficient funding)
- 1 ~~New Mayor (learning curve & public expectations high)~~
- 1 City location - on economic side - isolation of transportation to markets
- 1 ~~Sign Ordinance (electronic reader boards)~~
- 1 Shortage of commercial zoned property
- 1 ~~Development too restrictive~~
- 1 ~~Public apathy~~
- 1 ~~Prosecution services~~
- ~~Demographics (aging population)~~
- Marina (Insufficient funding)
- Animal control (Insufficient funding)
- Remodeling City facilities (City Hall, OHPD, Wastewater treatment) (Insufficient funding)
- Staff (Insufficient funding)
- Council travel/education (Insufficient funding)
- IT shortage (Insufficient funding)
- Adult Day Care (Insufficient funding)
- Affordable Housing
- Lack of capacity - water & sewer facilities
- ~~Administration transition~~
- Ready made buildings
- (ACUZ) encroachment area restrictions
- Perception that City Hall unfriendly for services
- Perception/Reality - Lack of communication (too many surprises, public inattentiveness)
- ~~Unbridled growth~~
- ~~Limited vision~~
- Location of wastewater treatment facility by the saltwater marsh lagoon (potential for flooding)

Opportunities analysis identifies those external conditions that are helpful to achieve the organization's objective.

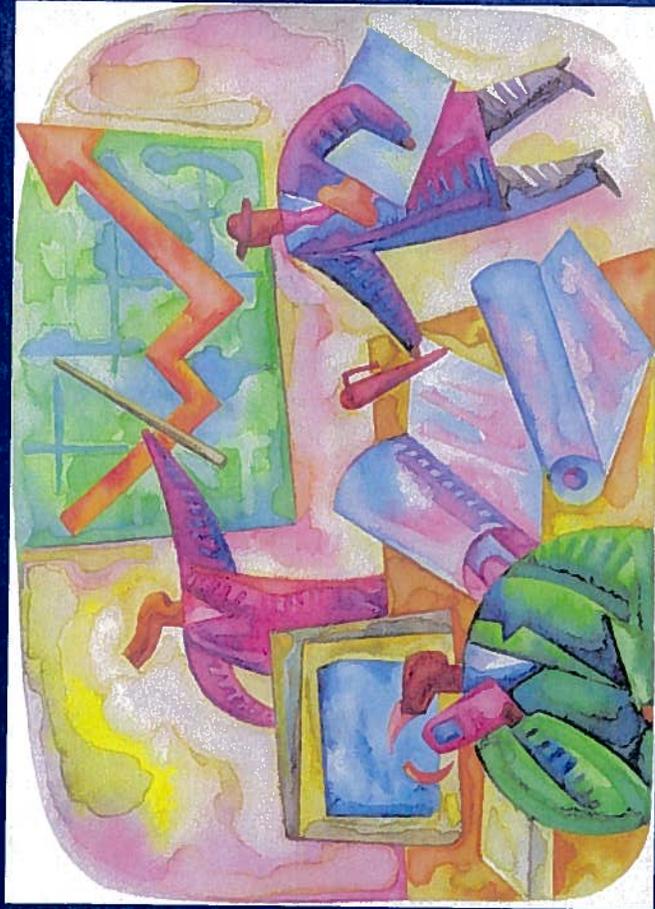
(Amended February 27, 2010)

- To make a difference thru prioritization & accomplishment (utilizing standing committees;
- 6 short/long term priorities)
 - 5 Create momentum for action
 - 4 Wastewater Treatment Plant (interlocal agreement with Navy - long term)
 - 4 Priorities, timetables & funding sources to public
 - 3 LID policies & incentives
 - 2 Windjammer Park plan
 - 2 Use Capital Improvement Plan as guideline
 - 2 Council to create a Green state
 - 1 Business Parks
 - 1 To be an event center (destination events)
 - 1 Willingness to progress - 50 year vision
 - 1 Find solutions - innovative & creative
 - 1 Bring back credibility of governing body
- Opportunity to strengthen interlocal agreements (WSDOT grant for Hwy 20 for traffic/lane expand; plus WA & Fed govt)
- 1 Doable projects within Windjammer (waterfront trail expand to Maylor Pt - owned by Navy)
 - 1 Advantageous property acquisition
 - 1 Create incentives for redevelopment zones
 - † ~~Generate and amend reasonable priorities~~
- Consolidate local Fire districts' resources
Tell the City story thru Whidbey News Times
"Pearl" potential
Develop good action plan for Marina
Business recruitment that isn't transportation dependent - retail service centers
Pier project - economic & social
Tourist destination with local buy-in (waterfront walkway, recession possibilities, Olympic 2010, ...)
Freund Marsh (~~divert storm water there~~) (expanded use)
Using Blogs to communicate
Regionalism for services (EMS, Fire, school district, multipurpose support bldg, youth services...)
Clarification of governmental roles and responsibilities
Potential workforce - ~~Teek~~
New stadium use/potential
Improve strengths
Airport – commuter airline
Potential conference/event center
Public attitude open to new solutions
Increase the perception of business friendliness
Increase use of Channel 10 for public education
Increase the types of communication opportunities

Threat analysis identifies those external conditions that are harmful to achieving the organization's objective.
(Amended February 27, 2010)

- 9 ~~No action or delayed action by Council*~~
 - 6 State unfunded mandates
 - 5 Funds*
 - 5 Infrastructure*
 - 2 Interagency "turf"*
Voter resistance to taxation - inhibit funding opportunities (fixed income retirees, Navy families)*
 - 2 Economic downturn*
 - 1 ~~Base closure*~~
 - 1 Vocal naysayer's*
Public Apathy*
Bridge destruction
Political changes*
~~Loss of medical services/providers*~~
Limited ability to complete all tasks (Council)*
Salt water marsh flooding
- *Council can impact

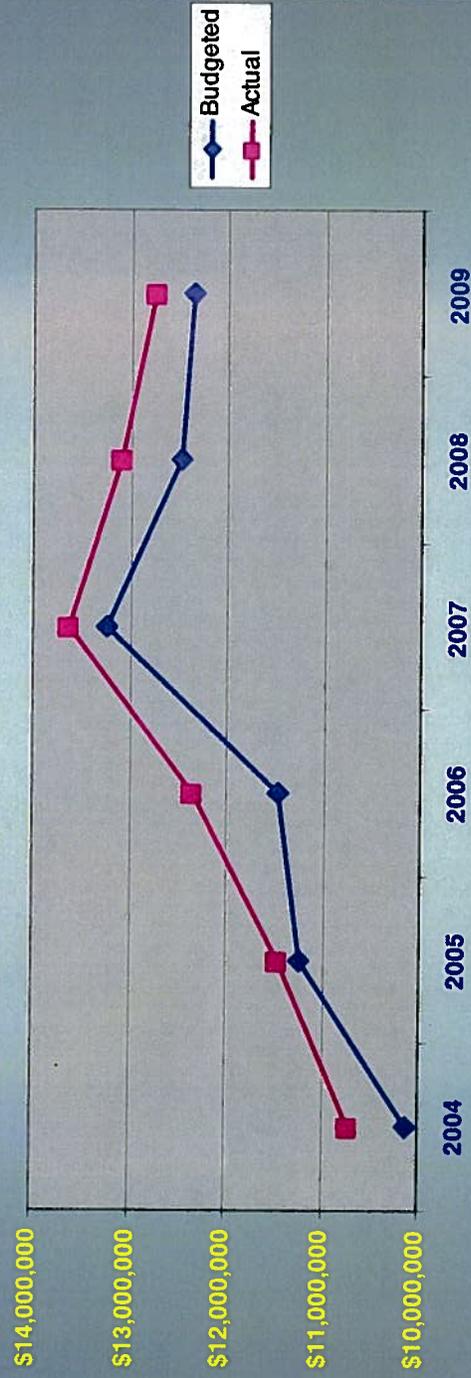
City of Oak Harbor
Council Retreat
February 27, 2010



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City Council Retreat
February 27, 2010

Conservatism: How close do we budget revenues?

General Fund Revenues



Conservatism: How close do we budget revenues?

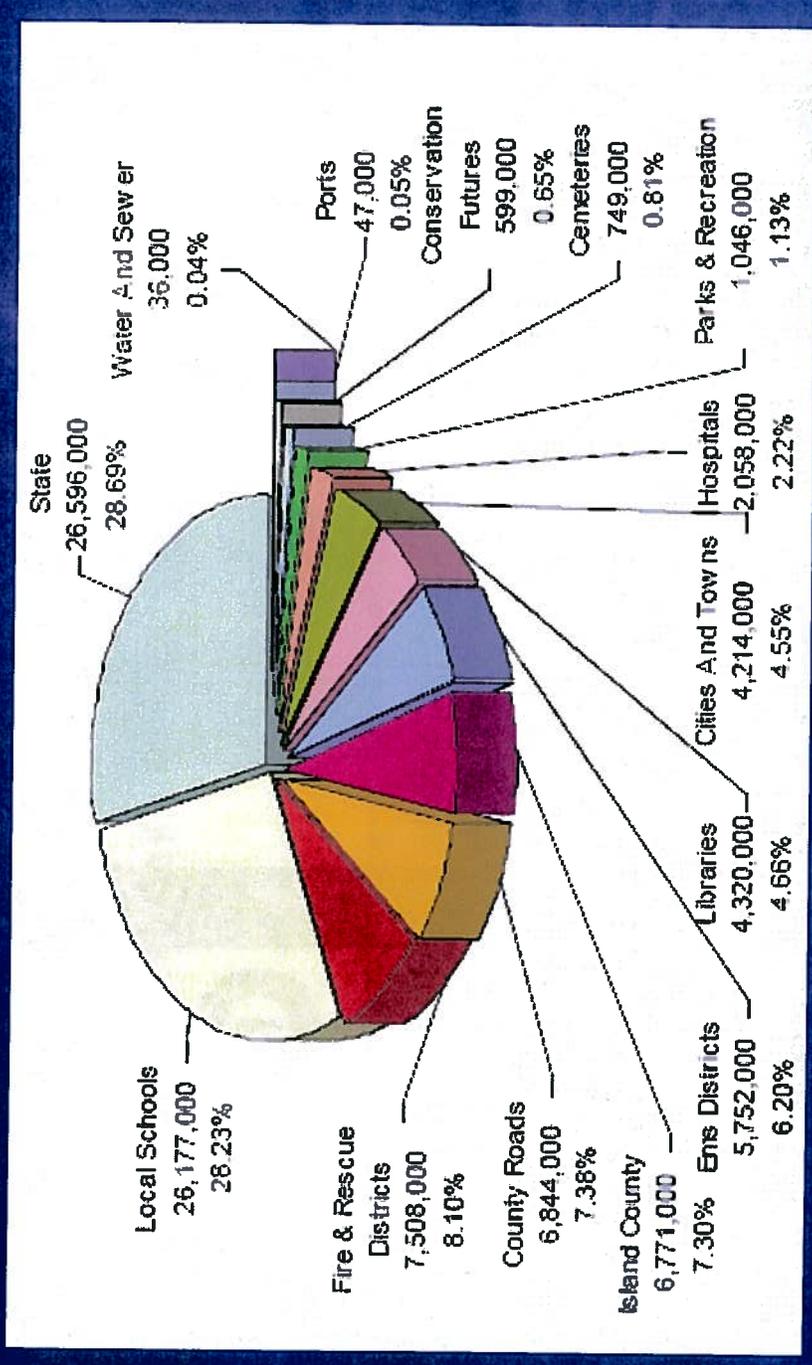
- The Finance Department's revenue projection target is to budget revenues between 95% and 98% of what might be achieved.
- Over the last 6 years, actual revenues have exceeded budgeted revenues by 4.34% putting our budget target average at 95.66%.
- The City has budgeted more conservatively the last 6 years due to the higher than average construction activity during 2004 through 2006.
- Over the last 10 years, actual revenues have always exceeded budgeted revenues.

Six Year Revenue Projections:

- Revenue projections for the General Fund
 - Property Tax
 - Sales Tax
 - Utility Tax
- Expenditure projections.
 - Review Projections Spreadsheet
 - Growth Rate Assumptions
- Comparison of Revenue Growth vs Expenditure Growth

**City of Oak Harbor
City Council Retreat
February 27, 2010**

Real Estate Property Taxes



20

City portion of Oak Harbor Tax Dollar

City: \$.26



County, State, Schools, etc: \$.74



Real Estate Property Taxes

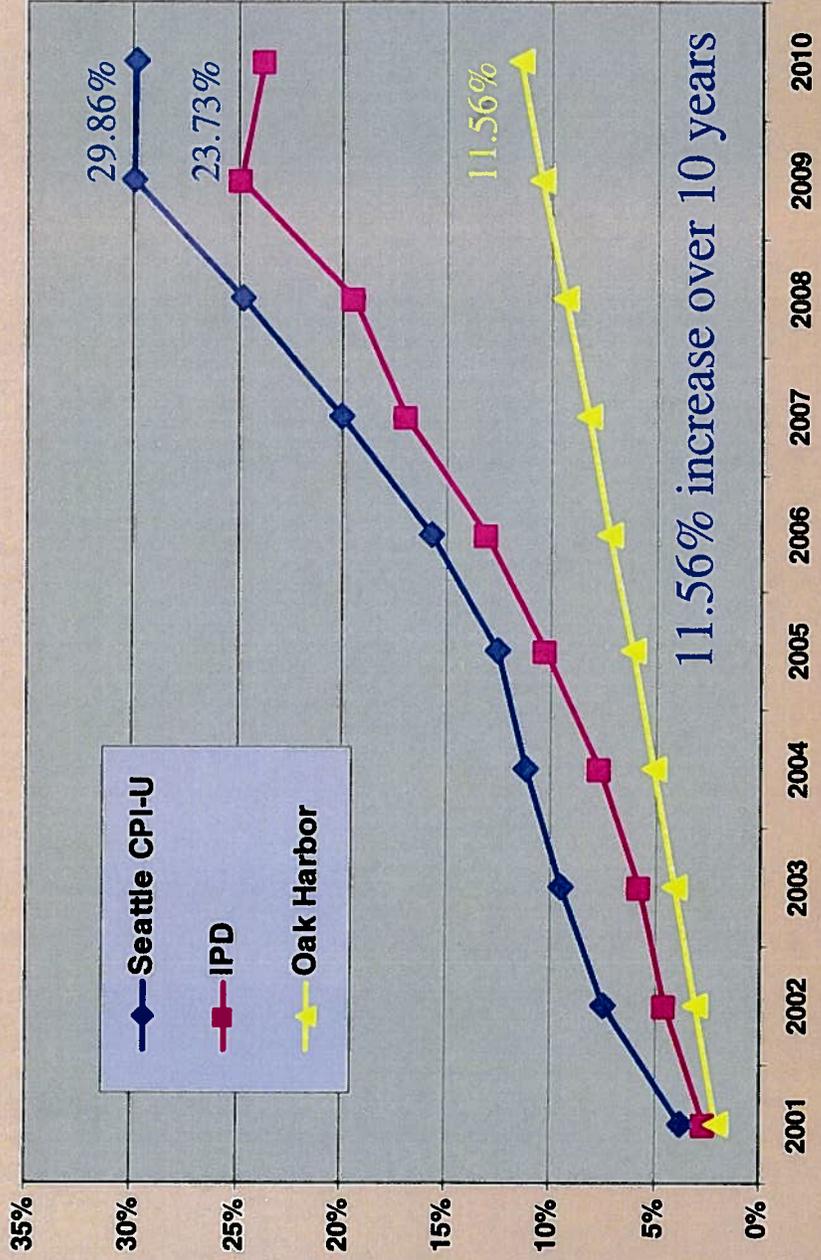
Actual	Actual	Budget	Projected	Projected
2007	2008	2009	2010	2011
\$3,536,468	\$3,680,344	\$3,907,748	\$3,995,673	\$4,085,630
			2.2500%	2.2514%

- Property taxes also increase slightly from the addition of new properties.
- Projection is calculated by adding 1% to the 2009 tax proceeds received, with an additional amount added as an estimate of taxes to be received from any annexations or new construction.
- The actual projected increases for 2010 and 2011 are 2.25% and 2.2514%, respectively.

PP

Inflation Measures versus Property Tax Growth

(Bureau of Labor and Statistics)



23

Sales Tax:

City of Oak Harbor
City Council Retreat
February 27, 2010

<u>Retail Sector</u>	<u>Contribution % Of Receipts Received</u>	<u>Current Year Change Compared to Last Year</u>
All others	28.10%	-9.76%
General Merchandise Stores	14.40%	3.90%
Construction of Buildings	13.60%	-9.90%
Food Services, Drinking Places	10.70%	1.70%
Building Material and Garden	8.30%	-26.40%
Motor Vehicle and Parts Dealer	7.10%	-23.20%
Specialty Trade Contractors	4.10%	-35.60%
Miscellaneous Store Retailers	4.00%	9.60%
Food and Beverage Stores	3.90%	-0.70%
Telecommunications	3.20%	1.40%
Wholesale Trade, Nondurable	2.60%	-24.50%
Total	100.00%	-7.10%

**City of Oak Harbor
City Council Retreat
February 27, 2010**

Sales Tax:

- Current economic slowdown has resulted in a decrease of the projection for sales tax to be -7.1% when compared to the amount received at the same time last year. 2009 Christmas was down 10.1%
- Currently, 2010 sales tax revenues will lag behind 2009 sales tax revenues by approximately \$102,000.
- 2010 will include a nominal growth increase in anticipation of the economic slowdown beginning to reverse, but will include a decrease of \$180,000 as the High School Construction Project is nearly complete.

	Actual	Actual	Projected	Projected
	2008	2009	2010	2011
	\$3,187,625	\$3,301,193	\$3,203,723	\$3,283,816
			-2.95%	-0.024999977

+2.50%

205

**City of Oak Harbor
City Council Retreat
February 27, 2010**

Utility Taxes:

- Utility Taxes have shown continued growth roughly matching the rate of inflation over time.
- Higher incident of bankruptcies, however most customer bases are transferable.
- Verizon claim for refund of taxes paid on intrastate DSL revenues.
 - Claim is in dispute at this time.
 - Will most likely result in some form of refund.
 - If Verizon is successful, others may apply as well

	Actual	Actual	Projected	Projected
	2008	2009	2010	2011
\$2,231,809	\$2,355,805	\$2,466,780	\$2,522,283	\$2,579,034
			2.25%	0.022499854

+2.2%

26

Development Revenues:

- When the 2009-2010 budget was adopted, a decrease in development revenue was projected based on development counts and noted decreases in sales tax revenues in the building sector.
- Currently, building permits are on target and slightly ahead of projections.
- Zoning and plan check fees are slightly behind projections

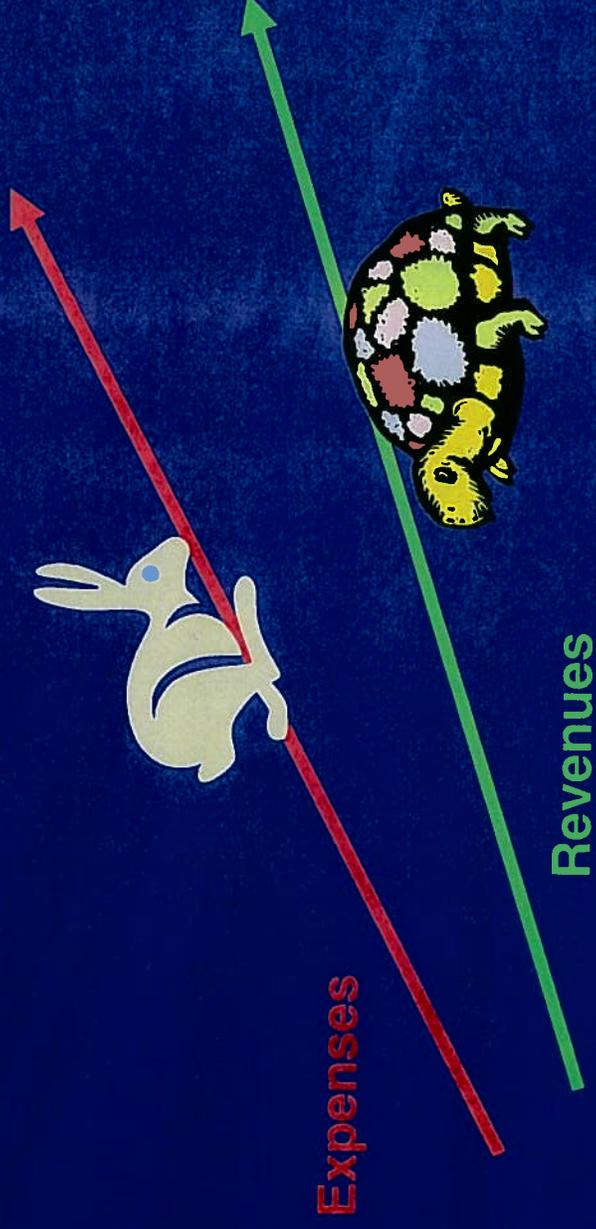
	Actual 2007	Actual 2008	Actual 2009	Projected 2010	Projected 2011
Building Permits	\$274,391	\$332,990	\$330,310	\$290,854	\$296,672
Zoning Fees	39,582	15,325	83,915	27,454	28,003
Annexation Fees	5,209	8,474	7,391	4,000	4,000
Plan Check Fees	146,707	49,792	88,686	69,239	70,624
	\$465,889	\$406,581	\$510,302	\$391,547	\$399,298

Other General Fund Revenues:

- Due to decreases in the prime rate by Fed action, investment revenue is at a historical low. Fed "bias" has been slightly positive this last week.
- All other General Fund, including Municipal Court and utility taxes revenues, are on target with 2009-2010 budgeted projections.
- Based on current projections, the General Fund revenues will increase approximately .80% and 2.3% for 2010 and 2011, respectively.

The Effect of Growth Rates:

- Cost of inflation grows faster than revenues.
- 50-year inflation trend averages about 3%.
- The mismatch in growth rates compounds your operating deficit each year into the future.



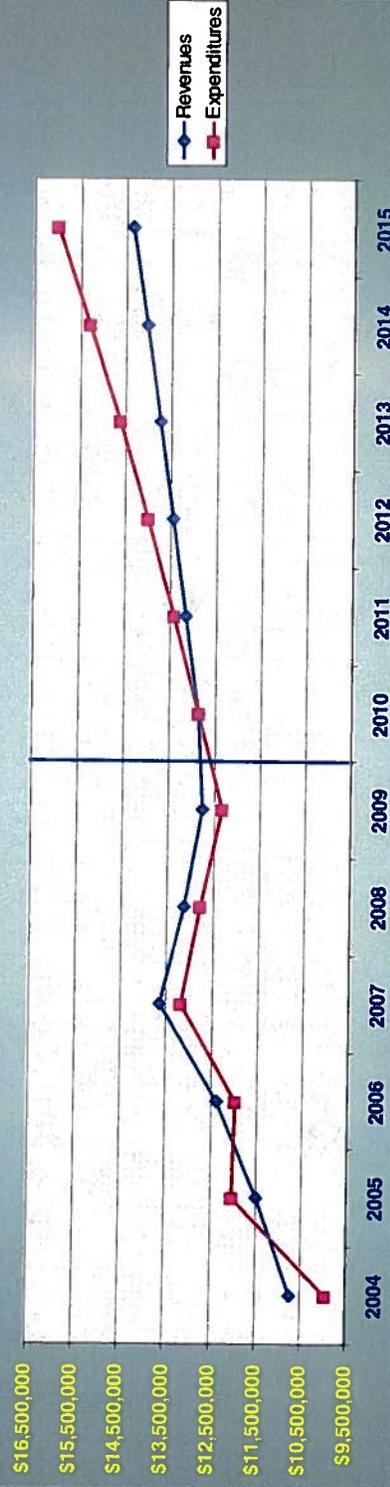
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City Council Retreat
February 27, 2010**

Growth Rates:

- Review of general fund revenue handout.
- Revenue growth rate projected at 0.8% and 2.30% for 2010 and 2011, respectively.
- Historically, General Fund expenditures grow approximately 4.0% to 5.5% per year.

30

Revenues vs Expenditures



Where do we go from here?

The 2011-2012 Budget Process will require a much more strategic and in-depth look at our:

- **Any potential revenue enhancements.**
 - State assistance?
 - Public involvement?
- **Any remaining cost saving scenarios.**
- **Our minimum Levels of Service.**
- **Measuring the effectiveness of what we do.**

City of Oak Harbor
City Council Retreat
February 27, 2010

Discussions

17

32

Exhibit C

RULE	SUBJECT	CHANGE PROPOSED
1	PURPOSE - SCOPE	COMBINE WITH 25 AND 26
2	SPECIAL MEETINGS	COVERED IN STATE LAW - DELETE
3	EXECUTIVE SESSIONS	COVERED IN STATE LAW - DELETE
4	QUORUM	PROHIBITS LEAVING WITHOUT PERMISSION ONCE MEETING IS CALLED TO ORDER; AND PROHIBITS PARTICIPATION BY ELECTRONIC MEANS
5	PRO TEM MAYOR; PRO TEM CLERK	NEED FOR PRO TEM CLERK RULE? OTHERWISE, STATE LAW ADDRESSES MAYOR PRO TEM
6	AGENDA SETTING AND ORDER	PROVIDE THAT AGENDA PUTS MOTION ON FLOOR FOR DISCUSSION AND ACTION (IF ANY)
6A	CONSENT AGENDA	NO CHANGE – GOOD DISCUSSION
7	PUBLIC HEARING NOTICE	COVERED IN CITY CODE – DELETE
8	MINUTES OF THE CLERK	SHOULD ORDINANCE BE NUMBERED BEFORE PASSAGE? RULE CURRENTLY REQUIRES IT
9	PUBLIC DISCUSSION	ADD: NO ACCUMULATION OF TIME BY SPEAKERS (LIMIT TO 3 MINUTES) AND NO USE OF ELECTRONIC DEVICES BY PUBLIC – JUST SPEECH (UNLESS ACCOMMODATION DUE TO DISABILITY)
10	PRESIDING OFFICER'S DUTIES	NO CHANGE
11	DEBATE/DISCUSSION	NO CHANGE
12	MOTIONS IN WRITING	REQUIRES AMENDMENTS TO ORDINANCE TO BE REDUCED TO WRITING BEFORE BEING VOTED UPON (NOT CURRENT PRACTICE BUT RECOMMEND TO FOLLOW)
13	PRIORITY OF MOTIONS – REFERENCES STURGIS	NO CHANGE
14	MOTIONS	NO CHANGE
15	NON/DEBATABLE MOTIONS	NO CHANGE
16	2/3 VOTE REQUIRED - 4 TYPES OF MOTIONS	NO CHANGE
17	VOTING	NO CHANGE
18	ADOPTED RULES OF ORDER - STURGIS	NO CHANGE
19	QUASI-JUDICIAL MATTERS	RECOMMEND EXPANDED RULE
20	REQUESTS FOR ADDITIONAL PUBLIC HEARINGS	NO CHANGE

21	WRITTEN MATERIALS SUBSEQUENT TO PUBLIC HEARING	THIS MAY NOT BE NECESSARY SINCE ALLOWED CASE BY CASE
22	RECONSIDERATION OF QUASI-JUDICIAL ACTIONS	INCLUDE IN EXPANDED QUASI-JUDICIAL RULE
23	RECONSIDERATION OF NON-QUASI-JUDICIAL MATTERS	NO CHANGE
24	RATIFICATION	NO CHANGE
25	FAILURE TO FOLLOW RULES	COMBINE WITH 1
26	INTERPRETATION	COMBINE WITH 1

RESOLUTION NO. 04-02

RESOLUTION ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL MEETINGS

BE IT RESOLVED by the City Council of the City of Oak Harbor that the following rules of procedure are adopted for City Council meetings:

**Administration and Personnel
Council Rules**

Rules:

1. Purpose - Scope.
2. Special meetings.
3. Meetings public - Executive sessions.
4. Quorum - Absent Councilmembers.
5. Presiding officer - Mayor, Clerk pro tempore.
6. Agenda.
- 6A. Consent agenda.
7. Public hearing notices and notice of preliminary Council agenda.
8. Minutes (City Clerk).
9. Public discussion.
10. Presiding officer's duties.
11. Debate/Discussion.
12. Motions in writing - When.
13. Motions - Priority.
14. Motions.
15. Motions - Debatable and Non-debatable.
16. Motions - 2/3's vote required.
17. Voting.
18. Adopted Rules of Order.
19. Quasi-judicial matters.
20. Requests for additional public hearings.
21. Written materials submitted subsequent to public hearings.
22. Reconsideration of quasi-judicial actions.
23. Reconsideration of actions which are not quasi-judicial.
24. Ratification.
25. Failure to follow rules.
26. Interpretation.

Rule No. 1: Purpose - Scope. The order of procedure and business herein contained shall govern deliberations and meetings of the City Council except as the same may be in conflict with RCW Chapter 35A.12 or other state law and constitutional provisions.

Rule No. 2: Special meetings. Special meetings may be called by the Mayor or by a majority of the Council by written notice delivered personally or by mail to each Councilmember and the Mayor at least twenty-four hours prior to the time set for the meeting as specified in the notice. The requirements of the "Open Meeting Law", RCW Chapter 42.30 shall apply in all respects to special meetings of the Council. Councilmembers may consent to personal written notice being placed in Councilmember's mailbox at City Hall; provided, further, in such cases a telephonic or personal notice shall be given to each Councilmember.

Rule No. 3: Meetings public - Executive sessions. All regular and special meetings of the Council shall be open to the public. The Council may hold executive sessions from which the public may be excluded for those purposes set forth in RCW 42.30.110 (Open Meeting Law), may order the removal of individuals who are interrupting the meeting as provided in RCW 42.30.050, and may exclude witnesses during investigation of a matter by the Council as provided in RCW 42.30.110.

Rule No. 4: Quorum - Absent Councilmembers.

- (1) A majority of Councilmembers of the Council shall constitute a quorum at all meetings of the Council, but a less number may adjourn from time to time and may compel the attendance of absent Councilmembers by direction to the Chief of Police under penalty. Once a meeting has been constituted and called to order, no Councilmember present shall absent himself/herself from the same without leave of the presiding officer or a majority of the Council. See Privileged Motion in Chapters 3, 4, 5, 6, 7, 8, 9, 10 and 15 of THE STANDARD CODE OF PARLIAMENTARY PROCEDURE (Fourth Edition) by Alice Sturgis.
- (2) No Councilmember may participate by electronic means. Thus, a person may not be absent from the meeting room and participate by phone, radio or video.

Rule No. 5: Presiding officer - Mayor, Clerk pro tempore. All meetings of the Council shall be presided over by the Mayor, or, in his/her absence, by the Mayor pro tempore. If the Clerk is absent from a Council meeting, the Mayor or Mayor pro tempore shall appoint a Clerk pro tempore. The appointment of a Councilmember as Mayor pro tempore shall not in any way abridge his/her right to vote upon all questions coming before the Council.

Rule No. 6: Agenda.

- (1) Preparation of Agenda. An agenda for regular meetings shall be prepared by the Mayor and transmitted to the Councilmembers. The agenda shall consist of the business to come

before the City Council, but shall not preclude the Council from considering matters in addition to those set forth on said agenda. The heads of the various departments of the City shall report agenda matters and deliver copies of supporting materials to the Mayor in sufficient time for their inclusion on the agenda.

- (2) Addition of items. Items added to the agenda within 48 hours of the meeting shall be considered only upon approval of a majority of the Council present at the meeting.
- (3) Order of Business. The order of business should follow as nearly as possible the order of the agenda as follows:
 - (a) Pledge of Allegiance.
 - (b) Invocation.
 - (c) Proclamations.
 - (d) Presentations or other non-action items.
 - (e) Citizen Comment Period (a maximum of three minutes per speaker for 15 minutes).
 - (f) Consent agenda.
 - (g) Hearings:
 - (i) Hearing (a maximum of three minutes per speaker, provided, that the Council may, in its discretion, allow for additional time where the complexity of issues involved requires more time in order to give the speaker a reasonable opportunity to be heard on the matter),
 - (ii) Passage of any applicable ordinance or resolution.
 - (h) Public meetings (consideration of ordinance).
 - (i) Resolutions.
 - (j) Other items C Contracts, Reports from staff, etc.
 - (k) Mayor and City Administrator comments, etc.
 - (l) Council comments and raised issues. See OHMC 1.04.020(3) and Rule 11(7).
 - (m) Mayor's comments.

(n) Adjournment.

The order of business set forth in this section is a guideline and shall not be construed in any way as to limit the order in which the Mayor puts the agenda together. Council may elect to proceed with its business as it deems appropriate upon majority vote.

"Public hearing" items listed on the agenda will reference (1) items that have been scheduled by City Council and (2) that a separate public advertisement has been published announcing the nature of the matter. Testimony or other input will be allowed at the time of the hearing.

"Public meeting" items on Council agendas will reference items which Council will take public input on the issue and usually have been scheduled by the Council in open meeting and are not listed as a public hearing.

Rule No. 6A: Consent agenda.

- (1) The Mayor shall place matters on a Consent Agenda which:
 - (a) have been previously discussed by the Council; or
 - (b) are based on the information delivered to members of the Council by administration which can be reviewed by a Councilmember without further explanation; or
 - (c) are routine or technical in nature so that passage without discussion is likely. These include contract approvals provided the agenda bill lists the dollar amount of the contract, assurances that the amount for the contract is within budget limits, proper bidding processes were followed and how the contractor was chosen.
- (2) The Clerk shall read the Consent Agenda actions, including the titles of any ordinances or resolutions contained therein.
- (3) The proper Council motion on the Consent Agenda is as follows: A motion to adopt the Consent Agenda. A second is required. This motion shall be non-debatable and will have the effect of moving to adopt all items on the Consent Agenda. Since adoption of any item on the Consent Agenda implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent Agenda. Therefore, prior to the vote on the motion to adopt the Consent Agenda, the Mayor shall inquire if any Councilmember wishes an item to be withdrawn from the Consent Agenda. If any matter is withdrawn, the Mayor shall place the item at an appropriate place on the agenda for the current or a future meeting.

Rule No. 7: Public hearing notices and notice of preliminary Council agenda.
See OHMC 1.04.020.

Rule No. 8: Minutes (City Clerk). The Clerk shall keep minutes of all regular and special meetings as part of a correct journal of all proceedings. The Clerk shall assign a number to each ordinance prior to the meeting at which it is to be considered for final passage.

Rule No. 9: Public discussion.

- (1) No person, not a member of the Council, shall be allowed to address the same while in session without the permission of the presiding officer. A Councilmember who wishes to ask a question of a member of the public shall seek permission from the presiding officer. The presiding officer shall have the authority to limit the time allowed to address the Council. Disorderly persons, including those who do not abide by the rules established, may be removed from the meeting place at the direction of the presiding officer. See RCW 9A.84.030 - Disorderly Conduct.
- (2) Council shall provide opportunity to be heard on all ordinances, resolutions and matters concerning budget related items. When allowed, audience participation shall usually be limited to a maximum of three minutes per speaker.
- (3) It is further recommended, that on each agenda item after a description of the matter has been made, that the Mayor ask if there are any questions or comments by citizens in the audience. After discussion by the Council commences, citizen comment should not be permitted except by permission of the Council. See Rule 11 also.

Rule No. 10: Presiding officer's duties. It shall be the duty of the presiding officer of the Council meeting to:

- (1) Call the meeting to order;
- (2) Keep the meeting to its order of business;
- (3) State each motion and require a second, when applicable, to that motion before permitting discussion;
- (4) Handle discussion in an orderly way:
 - (a) Give every Councilmember who wishes an opportunity to speak,
 - (b) Keep all speakers to the rules and to the questions,
 - (c) Give pro and con speakers an equal opportunity to speak;
- (5) Put motions to a vote and announce the outcome;
- (6) Suggest but not make motions for adjournment;

- (7) Call for short recesses up to 15 minutes;
- (8) Appoint committees when authorized by law or Council action;

Rule No. 11: Debate/Discussion.

- (1) Councilmembers may speak more than once on the same subject; provided, further, that after each Councilmember has had an opportunity to speak on a subject at least once, that only a majority of Councilmembers present may close debate;
- (2) No Councilmember may speak a second time to a question until every Councilmember choosing to speak has spoken. Each round of debate shall proceed in the same fashion -- i.e., no person shall speak again until all others have been given an opportunity to speak. However, an amendment or any other motion being offered, makes the real question before the assembly a different one, and, in regard to the right to debate, is treated as a new question. Merely asking a question, or making a suggestion, is not considered as speaking. The maker of a motion, though he/she can vote against it, should not speak against his/her own motion.
- (3) Unless permitted by a majority, no member may be allowed to speak for more than ten minutes on one agenda item, question or motion.
- (4) When an amendment is pending, the debate must be confined to the merits of the amendment unless it is of such a nature that its decision practically decides the main question.
- (5) Closure of debate.
 - (a) The Mayor may close debate after a call for the question has been made by a Councilmember and no one objects to closure or when all Councilmembers have indicated they have completed their discussion. The Mayor cannot close the debate as long as any Councilmember desires to speak.
 - (b) Council may close debate by motion and call for the question by motion after each Councilmember has had an opportunity to speak at least once. (See Rule 11(1).)
- (6) Discussion may occur on scheduled agenda items without there being a motion made on the matter. It is encouraged that each Councilmember be allowed to speak once before a motion is made so that fewer subsidiary motions and votes will be needed to dispose of a matter.
- (7) Councilmembers may bring up new business or old business and make inquiries of staff without putting the issue in the form of a motion. When asked by the Mayor or another

Councilmember, the Councilmember introducing the matter for discussion shall put the issue into the form of a motion.

- (8) Discussion should be addressed to the Mayor or to other Councilmembers.

Rule No. 12: Motions in writing - When. The presiding officer and any member of the Council may require a motion to be reduced to writing prior to a vote upon the same. All resolutions and ordinances shall be in writing before being adopted. Amendments to an ordinance shall be reduced to writing before being voted up.

Rule No. 13: Motions - Priority.

- (1) The following order shall be the order of priority for main and subsidiary motions:
 - (a) Adjourn - Recess.
 - (b) Question of privilege.
 - (c) Take from the table.
 - (d) Previous question.
 - (e) Postpone to a set time.
 - (f) Refer to a Committee, Commission or Board.
 - (g) Amend.
 - (h) Main question.
- (2) The main motion is lowest in rank.
- (3) To fix time to adjourn is the highest. When any motion on this list is before the Council, a motion above it on the list is in order, those below it are out of order.
- (4) Priority of incidental motions is as set out in Chapter 5 of THE STANDARD CODE OF PARLIAMENTARY PROCEDURE (Fourth Edition) by Alice Sturgis. (NOTE: Usually, subsidiary motions are permissible to make while considering any other regular business.)

Rule No. 14: Motions.

- (1) Motions shall be clear and concise and not include arguments for the motion within the motion.

- (2) There shall be no discussion of a motion prior to it being seconded other than to clarify the motion language.
- (3) If a motion does not receive a second, it dies. Motions that do not need a second include: nominations, withdrawal of motion, agenda order, request for a roll call vote, and point of order, privilege.
- (4) After a motion and a second, the Mayor will state the names of the Councilmembers making the motion and second. The Mayor, the Clerk or the motion maker shall restate the motion prior to debate.
- (5) After a motion has been made and seconded, the Council may discuss their options on the issue prior to the vote. No further citizen comments may be heard when there is a motion and a second on the floor.
- (6) A motion to table is not debatable and shall preclude all amendments or debate of the issue under consideration. If the motion to table prevails, the matter may be "taken from the table" only by adding it to the agenda of a future regular or special meeting at which time discussion will continue; and if an item is tabled, it cannot be reconsidered at the same meeting. A motion to table may not be used to dispose of a quasi-judicial matter.
- (7) A motion to postpone to a certain time is debatable, is amendable, and may be reconsidered at any regular meeting.
- (8) A motion to amend is defined as amending a motion that is on the floor and has been seconded, by inserting or adding, striking out, striking out and inserting, or substituting. A motion to amend a motion to amend is permitted but there is no amendment of amendment of an amendment. Only one motion to amend may be on the floor at any one time.
- (9) The City Attorney, or his/her designee, shall provide information to the Mayor or Council concerning questions of interpretations of these policies and procedures and other questions of a parliamentary nature which may arise at a Council meeting. The City Attorney, or his/her designee, may interrupt proceedings to provide advice concerning conformance with law and procedure.
- (10) All ordinances shall be prepared or reviewed by the City Attorney, or his/her designee, prior to being placed on the agenda. No ordinance shall be prepared for presentation to the Council unless requested by a majority of the City Council, or the Mayor or the City Attorney.

Rule No. 15: Motions - Debatable and Non-debatable. The following list shows which motions are debatable and which are not:

To fix time to adjourn.....	Non-debatable
Adjourn - Recess.....	Non-debatable
Privilege.....	Non-debatable
Take from table.....	Debatable
Postpone to a set time	Debatable
Previous question.....	Non-debatable
Refer to a Committee, Commission, Board or Staff.....	Debatable
Amend.....	Debatable
Main question or motion.....	Debatable

Rule No. 16: Motions - 2/3's vote required. Except as provided by State law, only the following motions shall require a two-thirds (2/3) vote:

- (1) Suspend rules.
- (2) Previous question unless all members have been allowed to speak at least once in which case only a majority is needed to sustain the previous question.
- (3) Prevent introduction of business.
- (4) Amend these rules during the same meeting the motion to amend these rules is first made.

Rule No. 17: Voting.

- (1) Each Councilmember present must vote on all questions put to the Council, except as to matters with respect to which the Councilman may have a conflict of interest. Votes may be by "aye", "nay" or abstention. No secret ballots are allowed.
- (2) The Mayor may vote in case of a tie except for the passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money. These matters shall require the affirmative vote of at least a majority of the whole membership of the Council (four Councilmembers).
- (3) When the Council concurs or agrees with an item that does not require a formal motion, the Mayor will summarize the agreement at the conclusion of the discussion.

- (4) Similarly, on matters concerned with the setting of dates for hearings, public meetings, workshops, special meetings for which the Council usually sets the date by formal motion, no formal motion is required, if after the Mayor or a Councilmember suggests a date, there is a consensus by all Councilmembers that the date is acceptable. The Mayor shall summarize the consensus and the matter shall be entered in the record as a Council action by consensus.

Rule No. 18: Adopted Rules of Order. Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10 and 15 of THE STANDARD CODE OF PARLIAMENTARY PROCEDURE (Fourth Edition) by Alice Sturgis shall govern the deliberations of the Council, except when in conflict with any of the foregoing rules and state law. Other sections of this text may be resorted to when deciding questions not addressed by constitutional or state law, ordinance or these rules but shall not be deemed rules of this Council or binding.

Rule No. 19: Quasi-judicial matters.

- (1) Whenever a quasi-judicial matter pending before the City Council involves a specific site, each member of the Council may visit the site prior to the making of a final decision in order to better understand the evidence to be presented. At the public hearing, Councilmembers shall disclose what information was observed.
- (2) Whenever the Council holds a public hearing on a quasi-judicial matter, whether an initial hearing or an additional hearing pursuant to Rule 19, each speaker testifying before the Council shall be allowed to speak for a maximum of three minutes; provided, that the Council may, in its discretion, allow additional time where the complexity of issues involved requires more time in order to give the speaker a reasonable opportunity to be heard on the matter.

Rule No. 20: Requests for additional public hearings. Where a public hearing was conducted prior to making a recommendation to the City Council, the City Council may consider holding an additional public hearing.

Rule No. 21: Written materials submitted subsequent to public hearings. Written materials may be submitted to the City Council following the close of a public hearing when authorized by Council on record.

Rule No. 22: Reconsideration of quasi-judicial actions. Any request of motion for reconsideration by a proponent or opponent of a quasi-judicial action of the City Council must be made in writing to the City Clerk. A motion to reconsider such action shall be out of order and shall not be acted upon unless made prior to taking up the start of the City Council agenda at the next regular City Council meeting following the meeting at which the action was taken. During the reconsideration period, no ex parte communication shall be made to any City Councilmember concerning the quasi-judicial action. "Action" shall mean the vote of the City Council expressing a decision even though followed at a later date by passage of an ordinance or resolution.

Rule No. 23: Reconsideration of actions which are not quasi-judicial. A member of the Council may request that the Council reconsider a decision on a matter which is not quasi-judicial in nature. A motion to reconsider must be made during the same meeting as the original action was taken.

Rule No. 24: Ratification. Only one reconsideration motion shall be allowed. Ratification shall be treated as a main motion and shall be for purposes of correcting procedural or substantive concerns and shall relate back to the date or original action unless the Council otherwise provides.

Rule No. 25: Failure to follow rules.

- (1) Failure to follow these rules shall not void any action taken by Council.
- (2) A Councilmember feeling a rule is violated may raise a privileged or incidental motion to seek redress before the Council.

Rule No. 26: Interpretation. This Resolution shall supercede Resolution Nos. 2000-05 and 2002-13 concerning Council procedure.

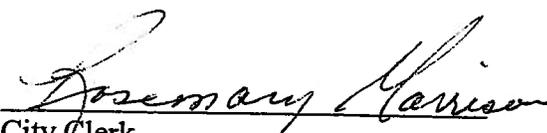
PASSED and approved by the City Council this 02 day of March, 2004.

THE CITY OF OAK HARBOR



Mayor pro-tem

Attest:



City Clerk

Approved as to Form:



City Attorney

G:\GLA\WORK\Res-Ord11\council rules res #4.wpd

Council Rules Resolution - 11

45

COUNCIL RULE NO. 6 – PARAGRAPH 1
(REVISION PROPOSED by CITY ATTORNEY in italics)

(1) Preparation of Agenda. An agenda for regular meetings shall be prepared by the Mayor and transmitted to the Councilmembers. The agenda shall consist of the business to come before the City Council, but shall not preclude the Council from considering matters in addition to those set forth on said agenda. The heads of the various departments of the City shall report agenda matters and deliver copies of supporting materials to the Mayor in sufficient time for their inclusion on the agenda. *For purposes of discussion, secondary motions and amendments, the placement of an action item on the agenda shall be deemed a motion to adopt the presented agenda item. However, any action on the agenda item, including adoption as presented, shall require a motion, a second and an affirmative vote of the council.*

Exhibit D

QUASI-JUDICIAL PROCEDURE – APPEARANCE OF FAIRNESS

- 1) Prior to staff presentation of a quasi-judicial matter, council members shall each determine whether the appearance of fairness doctrine requires that the council member recuse himself or herself from sitting on the quasi-judicial matter.
- 2) If the matter is a land-use decision, the council members shall identify:
 - If they have any interest in the property or application
 - If they own property within 300 feet of the subject property
 - If they stand to gain or lose any financial benefit as a result of the outcome of the hearing;
 - Whether they can hear and consider the application in a fair and objective manner.
- 3) In non-land use quasi-judicial matters, the council member shall identify:
 - If they stand to gain or lose any financial benefit as a result of the outcome of the hearing;
 - If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question;
 - If there is any reason why they could not be fair and impartial in deciding this matter.
- 4) Upon disclosure of any of the above potential appearance of fairness concerns, the parties and the public shall be given an opportunity to object to any council member sitting on the quasi-judicial matter based on the appearance of fairness doctrine. Failure to object to a council member sitting on the quasi-judicial matter when offered the opportunity shall constitute a waiver of that objection.
- 5) Council members are encouraged to recuse themselves if they feel there may be an appearance of fairness issue.
- 5) Any council member who recuses him or herself or who is recused upon the objection of a party or a member of the public shall leave the council hearing room prior to any testimony or consideration of the quasi-judicial matter.

QUASI-JUDICIAL PROCEDURE – EX PARTE CONTACTS

- 1) *Ex parte* contacts are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided.
- 2) Every council member shall disclose any *ex parte* contacts he or she had and describe them on the record prior to the quasi-judicial hearing.
- 3) Unless the council member feels that the *ex parte* contact(s) have affected his or her ability to be fair, the fact that the council member has had *ex parte* contacts shall not disqualify a council member PROVIDED that the council member discloses those contacts on the record prior to the quasi-judicial hearing.

4) In any case in which a council member has disclosed *ex parte* contacts, any party to the quasi-judicial hearing shall be allowed to rebut the substance of the *ex parte* contact(s) either prior to or during the quasi-judicial hearing.

QUASI-JUDICIAL PROCEDURE – TESTIMONY

1) Testimony may not be taken in closed record land use appeals. The council's decision must be based on the evidence in the record created by the Planning Commission or Hearing Examiner (as applicable). If the council determines that additional evidence is needed in such cases, the council may send the matter back to the Planning Commission or Hearing Examiner (as applicable) to add evidence to the record.

2) In other quasi-judicial matters, the council may take limited additional evidence but is encouraged to rely upon the record already created.

3) Prior to giving testimony, all witnesses shall be sworn on oath to testify fully and truthfully:
"I hereby swear or affirm that the testimony I am about to give shall be the truth and the whole truth."

4) Council members shall have the opportunity to ask questions of witnesses testifying at the quasi-judicial hearing.

5) After testimony, argument and council questioning has concluded, the council shall deliberate and make its decision in an open public meeting. If an Executive Session is authorized by state law, the council may adjourn to an Executive Session to the extent authorized by state law but shall make its decision in an open public meeting.

Exhibit E

COUNCIL RULE NO. ____ STANDING COMMITTEES - PURPOSE

- 1) There shall be four Standing Committees of the Oak Harbor City Council:
 - a. Public Safety
 - b. Public Works
 - c. General Government
 - d. Finance
- 2) The purpose of the standing committees is to receive information concerning matters to come before the City Council, to develop subject area-expertise among council members so that council resources are used most effectively, and to allow staff to respond to identified council member concerns prior to ultimate action by the entire city council so that action items are presented to the entire city council with as much pertinent information as the council members might need to make decisions.
- 3) No vote or action shall be taken in standing committees. However, any member of a standing committee may report upon information received in a standing committee meeting during discussion of that item for action by the City Council as a whole.

COUNCIL RULE NO. ____ STANDING COMMITTEES – MAKE-UP

- 1) Each standing committee shall consist of three City Council members.
- 2) The City Council shall appoint the members and the chair of each standing committee upon recommendation by the Mayor.
- 3) City Council members shall be appointed to a standing committee for a term of two years, but there shall be no restriction on the number of terms any City Council member may serve on any standing committee.

COUNCIL RULE NO. ____ STANDING COMMITTEES – PROCEDURES

- 1) Meetings of the standing committees shall be open public meetings, noticed as special meetings under the Open Public Meetings Act, Ch. 42.30 RCW.
- 2) It is anticipated that standing committees will meet at least once a month. Time and place for standing committees shall be as determined by each standing committee.
- 3) Meetings of standing committees shall be conducted with a prepared agenda.
- 4) Public comment will not be taken at standing committee meetings unless allowed by permission of the chair.

5) Individual standing committee members may request information of the Mayor but shall not directly dictate staff work or the timing of the preparation of any information.

Exhibit F

COUNCIL RULE NO. 9 PUBLIC DISCUSSION

- (1) No person, not a member of the Council shall be allowed to address the same while in session without the permission of the presiding officer. A Councilmember who wishes to ask a question of a member of the public shall seek permission from the presiding officer. The presiding officer shall have the authority to limit the time allowed to address the Council. Disorderly persons, including those who do not abide by the rules established, may be removed from the meeting place at the direction of the presiding officer. See RCW 9A.84.030 – Disorderly Conduct.
- (2) Council shall provide opportunity to be heard on all ordinances, resolutions and matters concerning budget related items. When allowed, audience participation shall usually be limited to a maximum of three minutes per speaker. *No speaker shall be allowed to cede his or her time to another speaker.*
- (3) It is further recommended that, on each agenda item after a description of the matter has been made, ~~that~~ the Mayor ask if there are any questions or comments by citizens in the audience. After discussion by the Council commences, citizen comment should not be permitted except by permission of the Council. See Rule 11 [*Debate/discussion*]also.
- (4) *Unless approved by the Mayor prior to the speaker beginning to address the Council, no member of the public may utilize an electronic or video device for purposes of his or her presentation to the Council. This restriction shall not apply to any device which is an accommodation for the speaker's disability.*

**Regular City Council Meeting
Tuesday, March 2, 2010, 6:00 p.m.
City Hall – Council Chambers**

CALL TO ORDER Mayor Slowik called the meeting to order at 6:00 p.m.

INVOCATION Tim Geist, Bible Baptist Church

ROLL CALL

Jim Slowik, Mayor	Paul Schmidt, City Administrator
Seven Members of the Council,	Margery Hite, City Attorney
Rick Alberg	Doug Merriman, Finance Director
James M. Campbell	Steve Powers, Development Services Director
Scott Dudley	Ethan Spoo, Senior Planner
Jim Palmer	Cathy Rosen, Public Works Director
Beth Munns	Eric Johnston, City Engineer
Danny Paggao, Mayor Pro Tem	Rich Tyhuis, P. Works Operations Manager – Streets, Water, Utilities
Bob Severns	Rick Wallace, Chief of Police
	Mark Soptich, Fire Chief
	Mike McIntyre, Senior Services Director
	Renée Recker, Executive Assistant to the Mayor

Gerry Oliver, Civil Service Commissioner, was also in attendance.

MOTION: Councilmember Campbell made a motion to defer recognition of Rhonda Severns' and Butch Reinstra's 30 years of City service to the next Council meeting (March 23, 2010). The motion was seconded by Councilmember Severns and carried unanimously.

MINUTES

February 16, 2010 Regular Meeting

Councilmember Alberg asked that agenda packet page 4 (minutes page 2) be corrected to show 80%/30% in the last sentence rather than 80%/50%. Councilmember Dudley asked that the date for blood donations on page 10 of the agenda packet (minutes page 8) be corrected to March 1, 2010.

MOTION: Councilmember Campbell moved to approve the minutes of the 2/16/10 regular meeting as corrected, and the minutes of the 2/18/10 special meeting. The motion was seconded by Councilmember Severns and carried unanimously.

NON-ACTION COUNCIL ITEMS

Proclamation – St. Patrick's Day

Mayor Pro Tem Paggao read this proclamation and presented it to Helen Chatfield-Weeks. This year marks the 37th Annual Irish Wildlife Parade in Oak Harbor. Dinner will follow at the Oak Harbor Yacht Club, and everyone is invited to participate in St. Patrick's Day events on March 17th.

Public Comments

Gerry Oliver, 947 NW Prow. Mr. Oliver talked about the ribbon cutting at On Frostad Pond and invited City Council to participate. Habitat for Humanity will be building three homes in this development and Mr. Oliver thought that the full development might represent affordable housing options for the community.

Mel Vance, P.O. Box 2882. Mr. Vance addressed his 2/2/10 Council meeting comments concerning Garry oaks and critical areas. He asked that the critical areas ordinance be reconsidered to encourage native plantings and layered plantings. Mr. Vance also talked about recent and severe pruning of Garry oaks off of Midway and asked if City staff could check these oaks.

With no other comments coming forth, Mayor Slowik closed public comments at 6:15 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Kiwanis, Community Easter Sunrise Service
- B. Purchase – 2010 Radio Read Water Meters
- C. Approval of Accounts Payable Vouchers

MOTION: Councilmember Palmer moved to approve Consent Agenda Items A, B, and C with Item C paying accounts payable check numbers 140541 – 140543 in the amount of \$41,943.15, accounts payable check numbers 140544 – 140673 in the amount of \$412,210.57, payroll check numbers 93594 – 93651 in the amount of \$942,023.71, and payroll check numbers 93652 – 93687 in the amount of \$3,913.48. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Sub-Division Code Amendments

Development Services Director Steve Powers asked that a 2/18/10 letter from Cory Ertel, SICBA, be added to the record (attached to these minutes as Exhibit A). The City Council opened a public hearing on the proposed amendments on February 2, 2010 which has remained open for this evening's meeting. The agenda bill summarizes and responds to those questions and items raised by Council at that meeting: narrow streets, fencing around stormwater ponds, street patterns and crime, and planned residential development – affordable housing density bonus. Agenda packet pages 77 and 78 addressed the ratio change: For every ~~two~~ (2) one unit of affordable housing provided, applicants are allowed ~~one~~ (4) five (5) additional units of market-rate housing. The bottom of page 77 and top of page 78 showed how the density bonus is calculated. This evening's final presentation represents two years worth of work.

Mayor Slowik opened the continued public hearing at 6:20 p.m.

Mel Vance, P.O. Box 2882. Mr. Vance restated his position on stormwater ponds and fencing (fencing should be required and not optional), use of rain gardens in planting strips, and asked that revisions be set aside for affordable housing and housing densities – form a comprehensive housing plan that encourages affordable housing. Breaking even is not an incentive and developers are better off donating land to agencies like Habitat for Humanity. Take some time on the affordable housing issue for both the community and developers. Mr. Vance

complimented Mr. Powers and staff for this presentation and years of work on the Sub-Division Code Amendments.

With no other comments coming forth, Mayor Slowik closed the public hearing at 6:25 p.m.

Council Comments

Discussion followed about the 2/15/10 SICBA letter which was added to the record of Council's 2/16/10 Council meeting and the three issues it presented, stormwater management (the public hearing is continued to Council's May 4, 2010 meeting), and how Title 21 now provides sections which will allow for easier amendment to just a part of the chapter, if needed. Chapter 19.31 is also easier to review. In response to Mr. Vance's comments, it was noted that the bonus of five additional market rate units for every one affordable unit in the project is a good formula for promoting affordable housing. Councilmember Alberg stated that, since he is in construction development, he wanted to note that he did not solicit SICBA for their letters, but it was nice to see their recognition of affordable housing issues. Discussion continued about narrow street design and parking, parking signs, fencing styles if used around stormwater ponds, the aesthetic of open space, the 3:1 threshold for determining when fences are required, and the future of affordable housing. Council thanked Mr. Powers and staff for their work on this project and the understandable presentations.

MOTION: Councilmember Alberg moved to close the public hearing; the motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the draft ordinance with amendments to Chapter 19.31, Planned Residential Developments. The motion was seconded by Councilmember Munns and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the draft ordinance with amendments to Title 21, Subdivisions. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the resolution approving the Subdivision Design Manual. The motion was seconded by Councilmember Palmer and carried unanimously.

Developer's Reimbursement Agreement (Latecomer's Agreement) – Palm Funeral Home
Councilmember Dudley had questions about recusing himself (appearance of fairness since he knows the applicant). City Attorney Hite noted that this is preliminary approval for design only of a latecomer's agreement and not quasi judicial at this point. Councilmember Dudley did not recuse. City Engineer Eric Johnston presented this agenda bill which requested and recommended preliminary approval of a developer's reimbursement agreement for extension of City sewer associated with the Palm Funeral Home project. The preliminary approval is limited to the design of the improvements and does not cover the cost or the apportionment of those costs. The Palm Funeral Home project, located on NE 16th Avenue, received short plat and site plan approval from the City in June 2009. The project includes the construction of a new funeral home and site development improvements for a second, vacant parcel created with the approved short plat. The project proponent has completed the necessary application forms for the developer's reimbursement agreement. The project is eligible for the reimbursement agreement.

Mayor Slowik called for public comments but there were none.

Council Comments

Discussion followed about the process for informing surrounding properties, that the agreement is recorded and runs with the property (not the individual owner), how costs are assessed or appropriated, and that the typical time limit, per Revised Code of Washington, is fifteen years but the time limit is also at Council's discretion. OHMC requirements for sewer extensions were also clarified.

MOTION: Councilmember Severns moved to authorize the Mayor to sign the preliminary approval, for design only, of a latecomer's agreement for the Palm Funeral Home sewer extension. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing, Quasi-Judicial Proceeding, and Fourth Quarter Report – Elements Nightclub

City Attorney Hite explained the appearance of fairness and quasi-judicial procedure beginning with ex parte communications. As stated in RCW 42.36.060:

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Ms. Hite then asked each Council Member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning Elements Nightclub. Councilmember Dudley stated that he had talked with one condominium owner who had a long list of issues regarding noise complaints; specifically, noise at closing time, and loud, boisterous activities.

Councilmember Almborg had no ex parte contacts since the original hearing. Councilmembers Campbell, Munns, Paggao, Palmer, and Severns had no ex parte contacts. Elements owner, Mike Kummerfeldt was invited to rebut ex parte contacts but he chose to hold comments at this point in the meeting.

Ms. Hite continued to the appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	Has partial interest in a commercial building within 300 feet, but no conflict.
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
6. Do you believe that you cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.							
No audience members came forward.							

City Attorney Hite noted that no conflicts were identified.

Chief of Police Rick Wallace presented 2009 fourth quarter report. This quarter showed a significant reduction in the number of calls for police service to Elements Nightclub with a total of ten calls for police service. Five of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The remaining five calls for service do pertain to the license conditions and are described as follows:

Assault Complaints (Inside the business)

(1) Complaint Taken – Female victim assaulted by female suspect. The officers were unable to locate the suspect.

Disorderly Conduct Complaints (2 total – 1 occurred in the business, the other was unfounded)

(1) Settled by Contact – Employees called regarding a customer who was refusing to leave. Subject left prior to officers' arrival.

(1) Unfounded – Anonymous call reporting disorderly subject at location. Officer could not find any type of disturbance or problem.

DUI – (In the area of the business)

(1) Arrest – Employee reported a possible DUI leaving location. Driver located and arrested.

Minor Frequenting Tavern – (Inside the business)

(1) Unfounded – Anonymous phone report of minors in the business. Officers were unable to locate any minors inside.

Mayor Slowik opened the public hearing at 7:03 p.m.

Mike Kummerfeldt, Owner of Elements Nightclub. Mr. Kummerfeldt asked if the licensing condition to have four security guards in the parking lot until 4:00 a.m. could be revised. The parking lot is cleared by 2:00 a.m. with the exception of casino patrons' activity between 2:00 a.m. and 4:00 a.m. When the parking lot is empty, it is pointless to pay four security guards to remain in the lot. Ten to twelve employees remain on-duty inside for casino activity and could tend to any problems in the lot after 2:00 a.m. Mr. Kummerfeldt suggested eliminating the four parking lot security guards at 2:15 a.m. instead of 4:00 a.m.

Mel Vance, P.O. 2882. Mr. Vance felt that Elements had complied with more conditions than other nightclubs in town and they had consistently taken steps to remedy any problems.

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:07 p.m.

Council Comments

Discussion followed about the number of parking lot security guards and if Chief Wallace would support a reduction in parking lot security after 2:15 a.m. Chief Wallace would support a modification but suggested 2:30 a.m. rather than 2:15 a.m. He also noted that some of the staff on-duty inside for the casino's activity are security personnel. Discussion continued about the differences between nightclubs and that Elements has the larger number of customers, is a busy nightclub, has effectively met the conditions of their nightclub license, and mitigated the effects of their problems. Discussion continued about Councilmember Dudley's ex parte contact and if they are permanent residents, if the complaints were about vehicles or disorderly conduct and the exact nature of the noise activity. They are not full-time residents, and a

neighbor had made calls on their behalf. Discussion followed about the reduced calls for police service noting that one of the calls was from Elements staff knowing that it would show on this quarterly report; they did the right thing.

City Attorney Hite asked Mr. Kummerfeldt if he now had any comments about ex parte contacts. Mr. Kummerfeldt responded that Elements is in the downtown district and, if compared to other bars/nightclubs' assaults, DUIs, and problems, Elements for its size is far below other establishments in calls for PD service. We are trying to control noise and its impact on neighbors and there is no safer club to go to than Elements.

Chief Wallace was asked to respond to Mr. Kummerfeldt's statement and, with reference to Lava Lounge's calls for PD service, did concur and noted that Elements is a larger club.

FIRST MOTION: (verbatim) Councilmember Munns moved that the security requirement for Elements, four people in the parking lot, go until 2:30 a.m. in the morning and then the staff would handle the security after that, as needed, until 4:00 a.m. for the second closing. The motion was seconded by Councilmember Palmer and carried unanimously.

SECOND MOTION: (verbatim) Councilmember Munns moved to have an annual report provided upon renewal of their license. The motion was seconded by Councilmember Campbell.

Discussion followed regarding the presentation date for an annual report, the benefit of a quarterly report, business licensing renewal notification which begins in December of each year, and whether this would trigger a duplicate report for 2010.

AMENDMENT TO THE SECOND

MOTION: Councilmember Severns moved to amend the motion for the annual report to begin with 2011 licensing. The motion was seconded by Councilmember Almberg.

Discussion followed regarding quarterly reports and whether they would then need to continue through 2010.

VOTE ON THE AMENDMENT TO THE SECOND

MOTION: Councilmembers Almberg, Campbell, Dudley, Munns, Paggao, and Severns voted in favor of the motion. Councilmember Palmer opposed. The amendment to the second motion carried.

Discussion continued with confirmation that the next report would be in conjunction with 2011's licensing and not reported quarterly through 2010.

VOTE ON THE SECOND

MOTION: Councilmembers Almberg, Campbell, Dudley, Munns, Paggao, and Severns voted in favor of the motion. Councilmember Palmer opposed. The second motion carried.

Mayor Slowik thanked Chief Wallace for the time it has taken to prepare quarterly reports. He also complimented Mr. Kummerfeldt on his efforts and results toward controlling these issues.

Break

Mayor Slowik called for a five-minute break at 7:30 p.m. and the meeting reconvened at 7:35 p.m.

Public Hearing and Final Consideration – Speed Limit Ordinance

City Engineer Eric Johnston presented this agenda bill for final consideration of proposed changes to Chapter 10.08 of the Oak Harbor Municipal Code related to speed limits. The changes are largely related to changes in city limit boundaries resulting from annexations over the last several years. Also included is a reduction of the speed limit along Heller Street and N Oak Harbor Street for consistency and safety. Mr. Johnston also talked about the three Es of traffic engineering: Enforcement, Education, Engineering. These changes will enhance compliance and help Oak Harbor's Police Department through a consistent approach to speed limits. The speed limit signs on Heller Street and Oak Harbor Street will be revised in accordance with the standards contained in the Manual on Uniform Traffic Control Devices as required by Washington State Law. Staff will coordinate with law enforcement agencies and Island County Public Works staff on the appropriate sign revisions.

Mr. Johnston also talked about two other items:

1. Crosswalks on Heller Road – the City and Oak Harbor School District are moving toward an improved crosswalk near the intersection of Heller Road and 8th Avenue which is grant-funded and will see activity in the next year. This will be an enhanced crosswalk.
2. Speed limits on SR-20 – The Secretary of Transportation is responsible for state route speed limits but the City works together with the State Department of Transportation. Mr. Johnston was pleased to report that WSDOT has agreed to review speed limits within City limits over the next several months.

Mayor Slowik opened the public hearing at 7:45 p.m.

Mel Vance, P.O. Box 2882. Mr. Vance spoke in support of the speed limit change and suggested dropping the speed limit further if a crosswalk is established at 8th. Mr. Vance would like to see the City work with the state to have 30 mph speed limit signs posted on every block from the closed Blockbuster site. Move the 30 mph at least to Erie if not further. Education of the public is key.

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:50 p.m.

Council Comments

Discussion followed about the type of crosswalk at Heller (painted and flashing lights) and that there are existing funds for these costs. Expenses run beyond materials to staff time, street crews, traffic counters, data, and time and expense for sign replacement. Discussion continued about the speed limit transitions from County to City limits and how signs are offset.

MOTION: Councilmember Munns moved to adopt the amendments and new sections to OHMC 10.08 related to speed limits as shown in the proposed ordinance. The motion was seconded by Councilmember Palmer and carried unanimously.

Public Hearing – 2010 Comp Plan Docket

Development Services Director Steve Powers presented this agenda bill for the 2010 Comprehensive Plan Amendment Docket. Though no sponsored amendment applications were received, there are amendments to consider in 2010. The proposed 2010 docket includes two mandated amendments and three City-initiated Comprehensive Plan Land Use Map changes. The mandated amendments are the UGA capacity analysis (City mandate) and the annual update to the Capital Improvements Plan (GMA mandate). The three City-initiated Land Use Map amendments are for City-owned properties.

Mayor Slowik opened the public hearing at 8:00 p.m. but there were no comments so the public hearing was closed.

Council Comments

Discussion followed regarding the reservoir site land use change and loss of business park designation, and the history of this property. Discussion continued about the Boyer property and its potential use as an oak grove or possibly, if the oak grove proves to be impractical, use as a national cemetery. This agenda bill only addresses the docket, the Comp Plan itself can not be amended more than once a year, but the process can be reviewed.

MOTION: Councilmember Palmer moved to approve the proposed 2010 Comprehensive Plan Amendment Docket and adopt Resolution 10-04. The motion was seconded by Councilmember Munns and carried unanimously.

City Administrator's Comments

City Administrator Schmidt reviewed upcoming meeting dates and Whidbey Island Marathon registration numbers. A "Municipal Issues on Oak Harbor T.V." Marathon presentation will be filmed on March 3rd and broadcast on Channel 10.

Council Members' Comments

Council Members gave their respective standing committee and board reports. Councilmember Dudley asked for a follow-up Marathon briefing during April 20th's Council meeting, thanked the City for the utility billing flyer, talked about the successful China City grand opening, and the Bids for Kids dinner and auction which benefits the Boys and Girls Club. Councilmember Dudley also read the list of annual award recipients which was presented by the Chamber.

Mayor's Comments

Mayor Slowik talked about his recent meeting with NASWI CO CAPT Gerral David, CDR Matt Miller, and NASWI Program Analyst Scott Smith with regard to the upcoming Pentagon meetings which will include the Secretary of the Navy and Chief of Naval Operations. Mayor Slowik, Councilmember Munns, Councilmember Almberg, and Councilmember Severns will be attending this year. Meetings are also scheduled in Washington, D.C. with Senator Patty Murray, Senator Maria Cantwell, Representative Rick Larsen, and Representative Norm Dicks. Other discussion points with Capt. David included maintenance of the wastewater treatment facility at the Seaplane Base, Forest City and non-military tenants, the Maylor Point ribbon cutting, the Marathon, June seaplane event, A-3 static display, Island Transit, traffic concerns by the child development center, and signage on the Walk of Honor by the PBY Museum. Mayor Slowik also talked about the paintings by featured artist Carolyn Bishoff which are on display in Council Chambers.

ADJOURN

With no other business coming before Council, Mayor Slowik adjourned the meeting at 8:30 p.m.

Connie T. Wheeler
City Clerk



February 18, 2010

Mr. Ethan Spoo, Senior Planner
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

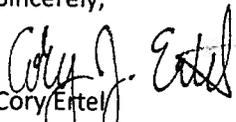
Dear Mr. Spoo:

This letter is to express the Skagit/Island Counties Builders Association's (SICBA) input regarding the city of Oak Harbor's draft Planned Residential Development (PRD) ordinance update, particularly as it relates to the proposed 5 to 1 density bonus for building units of affordable housing in future PRDs. SICBA is a roughly 600-member association representing the voice of the local building industry. Please consider this letter as SICBA's written input on this draft ordinance update and share it with Mayor Slowik and the City Council.

SICBA believes that if jurisdictions wish to have developers contribute toward affordable housing needs, they must find a way to properly incentivize the building community. We believe that the density bonus is a good vehicle to achieve this goal. The five bonus units for every one affordable unit currently proposed in the PRD code update certainly creates an appropriate incentive for the developer to fund this type of community contribution. If a proper and appropriate ratio is not established, then the density bonus will not be utilized and there will be no community benefit of additional affordable housing units established.

We commend the city of Oak Harbor for your work on this PRD code update and particularly for your efforts to create meaningful incentives for local developers to create future affordable housing in our community. If you have any questions regarding our feedback, please contact me at the SICBA office at (360) 757-6916 or via e-mail at cory@sicba.org.

Sincerely,


Cory Ertel
SICBA Government Affairs Director

CC: Oak Harbor Mayor Jim Slowik
Oak Harbor City Council
Steve Powers, Director of Development Services Department



62

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 1
Date: March 23, 2010
Subject: Island County Children's
Commission "Caught in the Act"
Recognition

FROM: Jim Slowik, Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

Island County Children's Commission recognizes youth that make a significant positive contribution to their community through their "Caught in the Act" program.

AUTHORITY

The Island County Children's Commission is an appointed commission under the Island County Board of Health that is dedicated to improving the quality of life for all Island County children and youth through informed advocacy and inclusive collaboration.

SUMMARY STATEMENT

The Mayor and City Council will recognize the following youth for being "Caught in the Act":

- Paul Derting for mentoring two young boys through Big Brothers Big Sisters
- Chad Merrill for his effort and leadership in creating a club called E.D.I.T. at the Library
- Rebecca Moeai for her coordination of the Ronald McDonald House Food Drive

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate the awardees.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

**City of Oak Harbor
City Council Agenda Bill**

Bill No. _____

Date: March 23, 2010

Subject: Employee Recognition

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE

To recognize two City employees for 30 years of service.

AUTHORITY

It is the practice of the City to recognize dedicated employees who have completed 10 years or more of service.

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employees for their years of service with the City:

- Rhonda Haines Severns – 30 years
- Butch Reinstra – 30 years

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Ms. Severns and Mr. Reinstra for completing 30 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF THE UNITED STATES 2010 CENSUS

WHEREAS, An accurate census count is vital to our community and residents' well-being by helping planners determine where to locate schools, day-care centers, roads and public transportation, hospitals and other facilities, and is used to make decisions concerning business growth and housing needs; and

WHEREAS, more than \$300 billion per year in federal and state funding is allocated to states and communities based on census data; and,

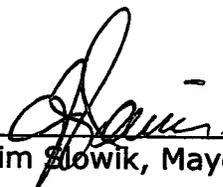
WHEREAS, census data ensure fair Congressional representation by determining how many seats each state will have in the U.S. House of Representatives as well as the redistricting of state legislatures, county commissions, and voting districts; and

WHEREAS, the 2010 Census creates jobs that stimulate economic growth and increase employment opportunities in our community; and

WHEREAS, the information collected by the census is protected by law and remains confidential for 72 years.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby encourage the citizens of Oak Harbor to participate in the **U.S. 2010 Census**.

Signed this 23rd day of March, 2010



Jim Slowik, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

LIONS CLUBS INTERNATIONAL DAY

MARCH 26, 2010

WHEREAS, The International Association of Lions Clubs was founded in 1917 by Chicago businessman Melvin Jones and is now the world's largest service club organization with over 1.3 million members in over 45,000 clubs worldwide; and

WHEREAS, the City of Oak Harbor and its surrounding area is fortunate to have the presence of two Lions Clubs, the Oak Harbor Lions Club, chartered in 1951, and the North Whidbey Lions Club, chartered in 1985; and

WHEREAS, both clubs have served our community through the donation of tens of thousands of dollars and thousands of man-hours; and

WHEREAS, while the Lions are best known for fighting blindness and assisting those who are sight and hearing impaired, they also serve our community by providing college scholarships to high school seniors and assisting special needs children and adults. In addition, they provide health screenings, sponsor youth athletic and academic events, participate in the Adopt-a-Highway and Adopt-a-Park programs, support local food banks, loan hospital equipment to people in need at no cost, support modifications to living quarters to allow for access as required, and provide immediate funding and hands-on assistance for worthy projects that meet the needs of the community.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim, **March 26, 2010** as **Lions Clubs International Day**.

Signed this 23rd day of March, 2010



Jim Slowik, Mayor

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**City of Oak Harbor
City Council Agenda Bill**

Bill No. 5

Date: MARCH 23, 2010

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator



Doug Merriman, Finance Director



Margery Hite, City Attorney

SUMMARY STATEMENT

City Council will accept public comments for items not otherwise on the agenda for the first 15 minutes of the Council meeting. You may also speak to any of the consent agenda items.

City of Oak Harbor City Council Agenda Bill

Agenda Bill No. C/A 6A

Date: March 23, 2010

Subject: Noise Permit – Chamber of
Commerce – Holland Happening

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Oak Harbor Chamber of Commerce for amplified sound associated with the upcoming Holland Happening Event.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Chamber of Commerce has submitted a Noise Permit request for amplified sound associated with planned entertainment at the Holland Happening event scheduled for April 23-25, 2010. The request states an entertainment stage will feature amplified back up music for dances and live cultural bands.

It is anticipated the music will occur between noon and 7:00 p.m. on Saturday, April 24 and between noon and 5:00 p.m. on Sunday, April 25, 2010. The stage will be located in front of Whidbey Coffee, 980 SE Pioneer Way.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were required for the Noise Permit.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:



2/18/10 /
2/19/10 KC

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- Athletic Event
- Noise Permit
- Car Show
- Other Street Fair, Carnival
- Marina Event
- Park Event
- Parade

Name of Applicant/Organization: Greater Oak Harbor Chamber of Comm.

Person in Charge: Marcus Carney Address: 32630 SR 30 OH.

Phone Number: Daytime: 675-3755 Work: same Email: marcus@oakhARBORchamber.com

Additional Authorized Individuals: Jill Johnson, Cathy Fakkema cfakkema@o

Phone Number: Daytime: 675-3755 Work: same Email: jill@oakhARBORchamber.com

Emergency Contact: Marcus Carney

Phone Number: Daytime: 675-3755 Work: 675-3755 Email: same

Type of Activity Planned (describe event): Parade, Street Fair, entertainment stage, canal races,

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES NO

Will Participants Pay a Fee or Make a Donation? (Please circle) YES NO

Will City Services/Street Closures/Equipment be required? If so, please describe: Request closure of Pioneer Way, Bayshore Drive, and side streets use of garbage cans, dumpsters and barricades, assistance of streets department personnel

Date(s) of Proposed Event: April 23-25, 2010

Hours of Operation: 10 am - 7 pm (Saturday) 10 am - 5 pm Sunday

Set-up Date/Time: April 23, 2010 5:00 pm - 9:00 pm

Dismantling Date/Time: April 25, 2010 5:00 pm - 8:30 pm

Number of Staff/Volunteers: 20-30

Estimated Number of Participants: 5,000 approx.

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):

Special Considerations – Will there be:

Amplified sound? YES NO
(Requires a noise permit, which is granted by the City Council*)

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number 50 species horses, dogs

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many? 20 Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. No parking signs, street closure barricades

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. The entertainment stage will feature amplified backup music for dancers, band amplified live cultural bands.

A copy of OHMC Section 6.56.030 may be obtained upon request.

Public Relations: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

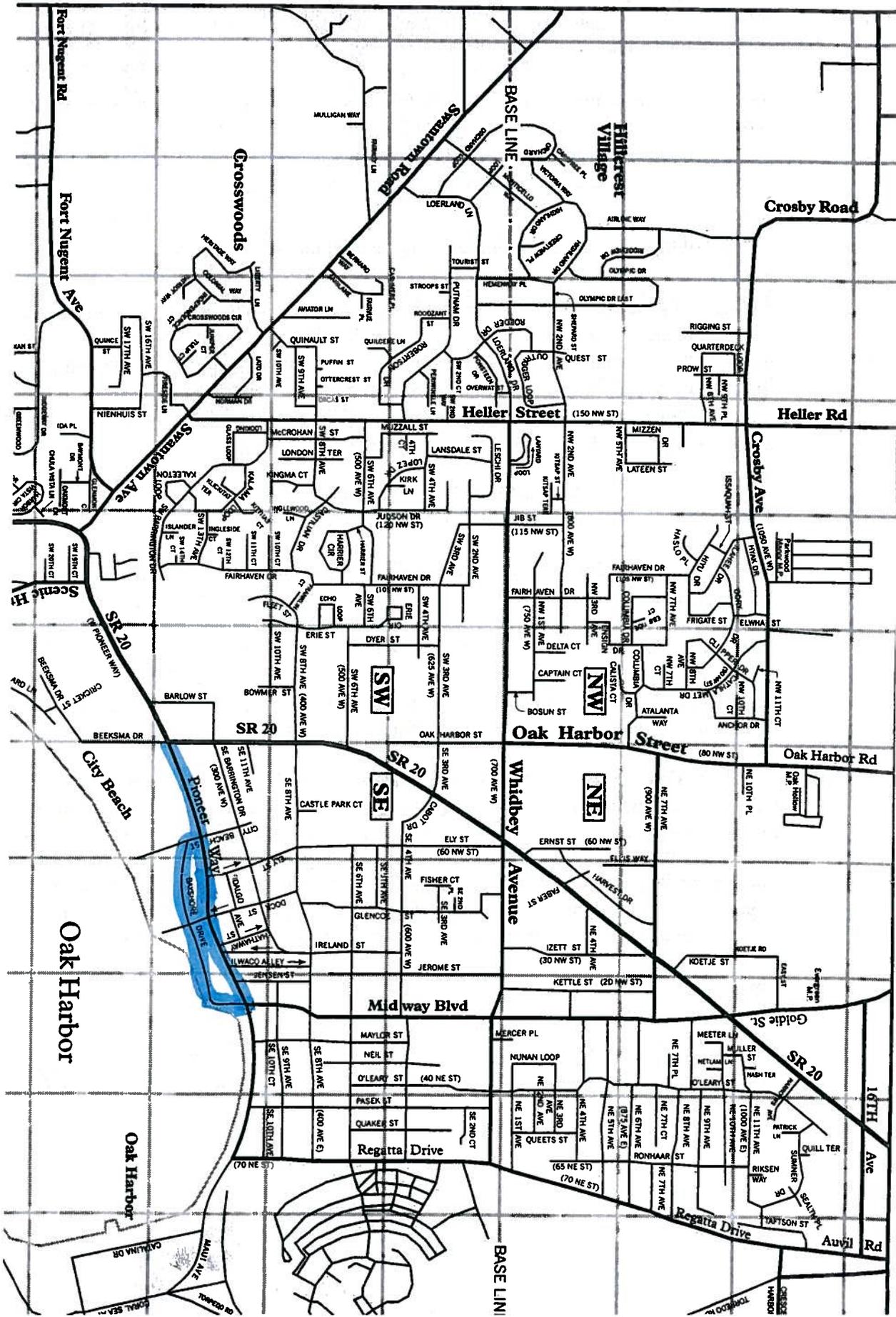
Businesses and residents on Pioneer and Bayshore will be notified, Island Transit will be notified, Yacht Club and Marina Patrons - Posted Signs

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization’s employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: February 18 2010
Signature of Applicant: [Signature]
Organization/Title: Tourism & Events Coordinator, Greater Oak Harbor Chamber of Commerce



73

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Oak Harbor Chamber of Commerce

Location of Event: Pioneer Way – in front of Whidbey
Coffee

Dates of Event: April 23-25, 2010

Hours of Operation: April 24, Noon – 7:00 p.m.
April 25, Noon – 5:00 p.m.

Permitted Noise: Amplified backup music for dancers
and live cultural bands

Approval Conditions: None

Date of City Council
Approval:

Issued this day of , 2010

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

**City of Oak Harbor
City Council Agenda Bill**

Agenda Bill No. C/A 6B
Date: March 23, 2010
Subject: Noise Permit – Whidbey Island
Tea Party

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor
Doug Merriman, Finance Director
Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Whidbey Island Tea Party for amplified sound associated with a tax payer rally.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Whidbey Island Tea Party has submitted a Noise Permit request for amplified sound associated with a planned tax payer rally scheduled for April 15, 2010. The request states the group will use an amplified sound system for speakers, a microphone and possibly music for patriotic songs.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were required for the Noise Permit.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to the Whidbey Island Tea Party for the scheduled tax payer rally.

Noise Permit – Whidbey Island Tea Party
March 23, 2010
Agenda Bill - 1

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

Noise Permit – Whidbey Island Tea Party
March 23, 2010
Agenda Bill - 2

2/19/10 | 2/19/10



SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- Athletic Event
- Noise Permit
- Car Show
- Other
- Marina Event
- Park Event
- Parade

Name of Applicant/Organization: Whidbey Island Tea Party

Person in Charge: _____ Address: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Additional Authorized Individuals: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Emergency Contact: _____

Phone Number: Daytime: same Work: same Email: same

Type of Activity Planned (describe event): TAX PAYERS Rally

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES NO

Will Participants Pay a Fee or Make a Donation? (Please circle) YES NO

Will City Services/Street Closures/Equipment be required? If so, please describe: No

Date(s) of Proposed Event: 15 APR APRIL 2010

Hours of Operation: 8 AM - 10 PM

Set-up Date/Time: 15 APR 10

Dismantling Date/Time: 15 APR 10 9 PM

Number of Staff/Volunteers: 5

Estimated Number of Participants: 100

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):
Windjammer Park Gazebo
smokehouse
Kitchen C

Special Considerations – Will there be:

Amplified sound? YES NO
(Requires a noise permit, which is granted by the City Council)*

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. None

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event.

Amplified sound system for
speakers so that gathered crowd may hear
them clearly. Possible patriotic music.

A copy of OHMC Section 6.56.030 may be obtained upon request.

Public Relations: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

No one, except those gathered in the immediate
vicinity, will be affected as we only intend to
be just loud enough for the crowd to hear us.

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR
MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: 19 Feb 10

Signature of Applicant: [Signature]

Organization/Title: Whidbey Island Tea Party
Treasurer

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Whidbey Island Tea Party

Location of Event: Windjammer Park Gazebo and surrounding area

Date of Event: April 15, 2010

Hours of Operation: 8:00 a.m. to 10:00 p.m.

Permitted Noise: Amplified sound for microphone, speakers and possibly music

Approval Conditions: None

Date of City Council Approval:

Issued this day of March, 2010.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

**City of Oak Harbor
City Council Agenda Bill**

Agenda Bill No. CHA 602
Date: March 23, 2010
Subject: Noise Permit – Filipino Christian Fellowship

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:





Jim Slowik, Mayor
Doug Merriman, Finance Director
Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Filipino Christian Fellowship for amplified sound associated with an Easter celebration.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Filipino Christian Fellowship has submitted a Noise Permit request for amplified sound associated with an Easter celebration event scheduled for April 4, 2010. The request states an amplified sound system will be used for speakers and a microphone for worship, singing and games.

The Easter celebration is scheduled from 10:00 a.m. to 5:00 p.m.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were required for the Noise Permit.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:



SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:

Please check the event type:

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> Athletic Event | <input type="checkbox"/> Marina Event |
| <input checked="" type="checkbox"/> Noise Permit | <input type="checkbox"/> Park Event |
| <input type="checkbox"/> Car Show | <input type="checkbox"/> Parade |
| <input type="checkbox"/> Other | |

Name of Applicant/Organization: FILIPINO CHRISTIAN FELLOWSHIP

Person in Charge: _____ Address: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Additional Authorized Individuals: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Emergency Contact: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Type of Activity Planned (describe event): EASTER CELEBRATION

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES NO

Will Participants Pay a Fee or Make a Donation? (Please circle) YES NO

Will City Services/Street Closures/Equipment be required? If so, please describe:
YES, we'll have easter worship, singing, games, egg hunting

Date(s) of Proposed Event: April 4, 2010

Hours of Operation: 10AM ~ 5PM

Set-up Date/Time: April 3, 2010 (1300)

Dismantling Date/Time: April 4, 2010 5PM

Number of Staff/Volunteers: 10

Estimated Number of Participants: 25-50

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):

Kitchen
Garage

Special Considerations – Will there be:

Amplified sound? YES NO
(Requires a noise permit, which is granted by the City Council)*

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (if yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many ? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. _____

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. worship, singing, games

= speakers, microphone sound system

A copy of OHMC Section 6.56.030 may be obtained upon request.

Public Relations: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization’s employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: 3 MAR 10

Signature of Applicant: Fe Reyes

Organization/Title: Filipino Christian Fellowship

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Filipino Christian Fellowship

Location of Event: Windjammer Park Gazebo and surrounding area

Dates of Event: April 4, 2010

Hours of Operation: 10:00 a.m. to 5:00 p.m.

Permitted Noise: Amplified sound system for speakers and microphone for worship, singing and games

Approval Conditions: None

Date of City Council Approval:

Issued this day of , 2010

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

**City of Oak Harbor
City Council Agenda Bill**

Bill No. d/A 60
Date: March 23, 2010
Subject: Change Fund Resolution

FROM: **Doug Merriman, Finance Director** 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Margery Hite, City Attorney, as to form

PURPOSE

To amend the City's Change Fund resolution changing the Change Fund (Senior Center) fund from \$150.00 to \$75.00.

AUTHORITY

Chapter 42.26 RCW Agency Vendor Payment Revolving Fund – Petty Cash Accounts provides the direction for the creation, use, maintenance, and accounting of change and petty cash funds. While the language is directed towards State agencies, the Office of the State Auditor holds municipalities to the same standards as political subdivisions of the State of Washington.

SUMMARY STATEMENT

The attached resolution is required whenever a change in the balance of a petty cash fund occurs. The following change is prompting this resolution:

1. The Senior Center is decreasing its change fund from the amount of \$150.00 to \$75.00. The change fund is used to provide startup change for Bingo and other programs.

With the exception of the Police Department's Investigative Fund, Change and Petty Cash Funds may not be used for personal cash advances even if secured by check or other IOU'S. Any person making a purchase with money from said funds shall obtain a receipt evidencing the transaction. At least once monthly or when withdrawals exceed 75% of the authorized amount of said fund, the fund custodian shall account to and request reimbursement to the fund from the Accounts Payable Clerk by submission of a claim voucher supported by the appropriate receipts. The funds so received shall be used to replenish the petty cash fund. Cash on hand and receipts for purchases shall at all times equal the amount of the petty cash authorized by this Resolution.

RECOMMENDED ACTION

- 1) Pass Resolution

ATTACHMENTS:

Resolution

MAYOR'S COMMENTS

RESOLUTION NO. _____

RESOLUTION DECREASING THE SENIOR CENTER CHANGE FUND TO THE SUM OF SEVENTY FIVE DOLLARS (\$75.00).

WHEREAS, a change in operational procedures has allowed for a decrease in the Senior Center change fund;

BE IT RESOLVED by the City Council of the City of Oak Harbor as follows:

1. This Resolution supersedes Resolution Nos. 12-73, 15-73, 5-74, 6-74, 1-75, 3-79, 2-82, 10-82, 90-10, 90-18, 91-04, 91-12, 92-01, 93-08, 94-30, 97-16, 2000-09, 02-16, 03-07 and 07-09.
2. There is hereby established the following Change and Petty Cash Funds in the amounts indicated:

Change Fund (Marina)	\$400.00	
Change Fund (Police Department)	250.00	
Change Fund (Finance Department)	600.00	
Petty Cash (Police Department)	200.00	
Chief of Police (Investigative)	5,000.00	
Change Fund (Senior Center)	150.00	75.00
Petty Cash (Senior Center)	300.00	
Petty Cash (Finance Department)	300.00	
Petty Cash (Municipal Court)	200.00	
Petty Cash (Fire Department)	200.00	
Change Fund (Library)	34.00	

With the exception of the Investigative Fund, change and petty cash funds may not be used for personal cash advances even if secured by check or other IOU's. Any person making a purchase with money from said funds shall obtain a receipt therefore evidencing the transaction. At least once monthly or when withdrawals exceed 75% of the authorized amount of said fund, the fund custodian shall account to and request reimbursement to the fund from the Accounts Payable Clerk by submission of a claim voucher supported by the appropriated receipts. The funds so received shall be used to replenish the petty cash fund. Cash on hand and receipts for purchases shall at all times equal the amount of the petty cash authorized by this Resolution.

The Finance Director is authorized to transfer additional funds as may be necessary to bring the petty cash funds up to the amounts indicated above and to establish the investigative fund and change fund.

PASSED and approved by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

**City of Oak Harbor
City Council Agenda Bill**

Bill No. CHA 6E

Date: March 23, 2010

Subject: Sale of Boat Vessel ID #
WN 0971 RG, a 1974
American sail boat

FROM: Steve Powers, Director of Development Services *PS*
Mack Funk, Harbormaster

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]

Jim Slowik, Mayor
Paul Schmidt, City Administrator
Doug Merriman, Finance Director
Margery Hite, City Attorney approved as to form

PURPOSE

This agenda bill requests City Council approval of a resolution authorizing the sale of a vessel in order to collect unpaid moorage charges.

AUTHORITY

RCW 53.08.320 and Oak Harbor Municipal Code Section 6.36.040 authorize the City to secure vessels for non-payment of charges. Following proper notice to the owner, 90 additional days without payment and subsequent City Council action, the Marina is authorized to conduct a sale of the vessel to recover its costs.

SUMMARY STATEMENT

The owner of Vessel ID #WN 0971 RG has not made storage payments since August 2009. The current balance due is \$444.52. As a result of this non-payment, the vessel was secured by the marina on August 11, 2009 [OHMC 6.36.040 (1)]. The owner was notified by registered mail on August 11, 2009 of this action. After securing the vessel, the City must wait for 90 days before seeking authorization to sell the vessel [OHMC 6.36.040 (5)]. The 90 day waiting period has now elapsed. The vessel owner has also been notified of the March 23, 2010 Council meeting.

STANDING COMMITTEE REPORT

The proposed action was reviewed by the Governmental Services Committee at the February 9, 2010 meeting.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION

- Conduct a public meeting.
- Pass a resolution authorizing the Mayor to approve the proposed sale of the vessel.

ATTACHMENTS

1. Memo to Mayor and Council from the Harbormaster
2. Proposed resolution
3. Letter to Vessel owner dated July 24, 2009
4. Letter to Vessel owner dated August 11, 2009 and Notice
5. Letter to Vessel owner dated February 22, 2010.

MAYOR'S COMMENTS

**OAK HARBOR MARINA
Mack L. Funk, Harbormaster
1401 SE Catalina Drive
Oak Harbor, Washington 98277**

MEMORANDUM

TO: Mayor and City Council
FROM: Mack Funk, Harbormaster
RE: Vessel ID WN 0971 RG

The boat described above was placed at the Oak Harbor Marina on or about May 17, 2008 by the owner, Ed Harper, whose last known address is Apartment C-26 2421 Bentzen Circle ANCHORAGE, AK 99517.

Storage for the vessel is currently \$48.31 per month. No storage payments have been made since August 2009.

A letter was sent to the owner, advising that if the account was not brought current, the boat would be secured and not released until payment was made.

The boat was secured on August 11, 2009, by authorized personnel of the Oak Harbor Marina. A Notice was attached to the boat advising of the seizure. A letter was sent by both regular mail and registered mail, return receipt requested, to the then current address, on August 11, 2009 with a copy of the Notice advising that if the Marina charges were not paid within ninety (90) days the boat would be sold at public auction.

More than ninety (90) days have elapsed since the date of mailing the Notice and the owner has not paid the Marina charges and the boat is now presumed to be abandoned. Therefore, I am requesting that you authorize the sale of the boat at auction so that the City may recover the "Marina charges".

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1/25/10 Oak Harbor, Washington
Date and Place of Signing

Mack Funk
Mack Funk, Harbormaster

RESOLUTION No. _____

RESOLUTION AUTHORIZING SALE OF A BOAT FOR "MARINA CHARGES"

WHEREAS, the City Council duly held a public meeting on _____, 2010, wherein the City Council considered whether or not a vessel located in the Oak Harbor Marina is abandoned; to wit:

Vessel ID WN 0971 RG

and having found that:

- The vessel was moored or stored at the Oak Harbor Marina;
- Storage charges owing on the vessel were not paid in full within 90 days from the time the owner of the vessel was notified by registered mail:
 1. that charges were owing;
 2. of the owner's right to commence legal proceeding to contest that such charges are owing; and
- the owner has not commenced legal proceedings; and
- the vessel is presumed to have been abandoned by the owner;

and the procedures required by RCW 53.08 have been complied with; now, therefore,

BE IT RESOLVED by the City Council of the City of Oak Harbor that the vessel above-described which has been abandoned by its owner shall be sold at public auction at a time and place to be fixed by the Harbormaster after giving due notice to the listed owner at the last known address and listing the same in a newspaper of general circulation in Island County at least ten (10) days and not more than twenty (20) days before the sale.

PASSED and approved by the City Council this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

Margery Hite
City Attorney



July 24, 2009

Mr. Ed Harper
 PO Box 518
 Oak Harbor, WA 98277

VIA REGISTERED MAIL

RE: Past Due Moorage- Oak Harbor Marina
 Account No. 4607
 Vessel ID WN 0971 RG

Dear Mr. Harper,

This account is more than sixty (60) days past due. The amount owed as of July 24 is \$431.97.

You should be aware that if this amount is not paid within fifteen (15) days of the date of this letter, your vessel, described above, is subject to seizure by the City of Oak Harbor. You have a right to a hearing to adjudicate whether the amount owed is correct or the securing of the vessel is proper by filing a lawsuit in a court of competent jurisdiction within fifteen (15) days from the date of this letter.

If the payment is not made or no such lawsuit is filed, the City will seize the vessel and hold it until payment is made and, if payment is not made, may sell the vessel.

We hope this will not be necessary.

Sincerely,

Mack Funk
 Harbormaster

Registered No. RE207944416US		Date Stamp
To Be Completed By Post Office	Reg. Fee \$10.60	0262
	Handling Charge \$0.00	Return Receipt \$2.30
	Postage \$0.44	Restricted Delivery \$0.00
	Received by <i>[Signature]</i>	
Customer Must Declare Full Value \$0.00		Domestic insurance up to \$25,000 is included based upon the declared value. International Indemnity is limited. (See Reverse).
OFFICIAL USE		
To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed	FROM	98277 CITY OF OAK HARBOR MARINA 865 SE BARRINGTON DR OAK HARBOR WA 98277
	TO	OAK HARBOR WA 98277 HARPER PO BOX 518 OAK HARBOR WA 98277
	PS Form 3806, Receipt for Registered Mail Copy 1 - Customer	
	May 2007 (7530-02-000-9051) (See Information on Reverse)	
	For domestic delivery information, visit our website at www.usps.com®	

ATTACHMENT 3

95



Registered No. RE207988519US		Date Stamp	
To Be Completed By Post Office	Reg. Fee	\$10.60	0262
	Handling Charge	\$0.00	Return Receipt \$2.30 14
	Postage	\$0.44	Restricted Delivery \$0.00 08/11/09
	Received by	[Signature]	
Customer Must Declare Full Value \$0.00		Domestic Insurance up to \$25,000 is included based upon the declared value. International Indemnity is limited. (See Reverse).	

OFFICIAL USE

To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed	FROM	City of Oak Harbor 865 SE Barrington Dr Oak Harbor, WA 98277
	TO	DAK HARBOUR WA 98277 P.O. Box 518 Oak Harbor, WA 98277

August 11, 2009

Mr. Ed Harper
PO Box 518
Oak Harbor, WA 98277

VIA REGISTERED MAIL

PS Form 3806, Receipt for Registered Mail Copy 1 - Customer
May 2007 (7530-02-000-9051) (See Information on Reverse)
For domestic delivery information, visit our website at www.usps.com®

RE: Past Due Moorage- Oak Harbor Marina
Account No. 4607
Vessel ID WN 0971 RG

Dear Mr. Harper,

The above-referenced vessel has been secured at the Oak Harbor Marina for non-payment of Marina charges. Enclosed is a copy of the Notice fastened to your vessel.

Your vessel will be released at such time as all outstanding fees and charges, including legal fees incurred as a result of the seizure, have been paid in full. Alternatively, if you contest the amount of charges owing, you can post a cash bond or other acceptable security with the City in an amount sufficient to cover all Marina charges owing, including costs of collection. Such bond or security will be held by the City until agreement is reached or disposition is made by a court. You have a right to a hearing to contest these charges. In order to obtain that hearing, you must commence legal proceedings against the City of oak Harbor for the return of your vessel.

The amount owing to date is \$555.44. Failure to pay this amount *in full* or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

Because of the ongoing delinquency of your account, partial payment will no longer be accepted. Your vessel will remain secured and procedures for sale of your boat will continue until and unless the balance owing on your account is paid in full.

We look forward to the prompt payment of outstanding charges and satisfactory resolution of the issues.

Yours truly,
CITY OF OAK HARBOR

By Mark Z Funk
Harbormaster

ATTACHMENT 4

96

NOTICE

**THIS VESSEL HAS BEEN SECURED FOR NON-PAYMENT OF MARINA CHARGES,
AND IS SUBJECT TO SALE BY THE CITY OF OAK HARBOR IF CHARGES ARE
NOT PAID IN FULL.**

**THIS VESSEL MAY BE SOLD AT PUBLIC
AUCTION NINETY DAYS FROM THE DATE
HEREOF TO SATISFY PAYMENT OF MARINA
CHARGES OWED. THE OWNER OF THIS VESSEL
CAN OBTAIN INFORMATION CONCERNING ITS
RELEASE AT:**

CITY OF OAK HARBOR

**865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
360-279-4575**

**VESSEL ID WN 0971 RG
SLIP / LOCATION DL-50
ATTACHED: DATE 8/11/09 TIME 9 am**

**BY: Mack Funk
Representative, City of Oak Harbor**

**Any attempt to remove this vessel as secured will
result in the
CITY OF OAK HARBOR
filing charges of
BURGLARY - THEFT - CRIMINAL TRESPASS
or other crimes**



Oak Harbor Marina
Mack L. Funk, Harbormaster

February 22, 2010

**VIA First Class and REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Ed Harper
Apartment C-26
2421 Bentzen Circle
Anchorage, AK 99517

Re: Vessel ID WN 0971 RG
1974 American

Dear Mr. Harper:

The public meeting of the City Council has been re-scheduled for March 23, 2010 at 6 p.m., so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

Mack L. Funk
Harbormaster

ATTACHMENT 5

**City of Oak Harbor
City Council Agenda Bill**

Bill No. C/A 6F

Date: March 23, 2010

Subject: Sale of Boat Vessel ID #
WN 2961 P, a 1969
Fairline power boat

FROM: Steve Powers, Director of Development Services *SP*
Mack Funk, Harbormaster

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**



Jim Slowik, Mayor

Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney approved as to form

PURPOSE

This agenda bill requests City Council approval of a resolution authorizing the sale of a vessel in order to collect unpaid moorage charges.

AUTHORITY

RCW 53.08.320 and Oak Harbor Municipal Code Section 6.36.040 authorize the City to secure vessels for non-payment of charges. Following proper notice to the owner, 90 additional days without payment and subsequent City Council action, the Marina is authorized to conduct a sale of the vessel to recover its costs.

SUMMARY STATEMENT

The owner of Vessel ID #WN 2961 P has not made moorage payments since June 2009. The current balance due is \$1495.79. As a result of this non-payment, the vessel was secured by the marina on October 15, 2009 [OHMC 6.36.040 (1)]. The owner was notified by registered mail on October 15, 2009 of this action. After securing the vessel, the City must wait for 90 days before seeking authorization to sell the vessel [OHMC 6.36.040 (5)]. The 90 day waiting period has now elapsed. The vessel owner has also been notified of the March 23, 2010 Council meeting.

STANDING COMMITTEE REPORT

The proposed action was reviewed by the Governmental Services Committee at the February 9, 2010 meeting.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION

- Conduct a public meeting.
- Pass a resolution authorizing the Mayor to approve the proposed sale of the vessel.

ATTACHMENTS

1. Memo to Mayor and Council from the Harbormaster
2. Proposed resolution
3. Letter to Vessel owner dated September 29, 2009
4. Letter to Vessel owner dated October 15, 2009 and Notice
5. Letter to Vessel owner dated February 22, 1010.

MAYOR'S COMMENTS

OAK HARBOR MARINA
Mack L. Funk, Harbormaster
1401 SE Catalina Drive
Oak Harbor, Washington 98277

MEMORANDUM

TO: Mayor and City Council
FROM: Mack Funk, Harbormaster
RE: Vessel ID WN 2691 P

The boat described above was placed at the Oak Harbor Marina on or about March 1, 2004, by agreement with the owners, Bert Balsz and Julie Smith, whose last known address is 1731 Stephen St. #1 Oak Harbor, WA 98277.

Moorage for the vessel is currently \$193.43 per month. No moorage payments have been made since June 2009.

A letter was sent to the owner, advising that if the moorage was not brought current, the boat would be secured and not released until payment was made.

The boat was secured on October 15, 2009, by authorized personnel of the Oak Harbor Marina. A Notice was attached to the boat advising of the seizure. A letter was sent by both regular mail and registered mail, return receipt requested, to the above address, on October 15, 2009 with a copy of the Notice advising that if the Marina charges were not paid within ninety (90) days the boat would be sold at public auction.

More than ninety (90) days have elapsed since the date of mailing the Notice and the owner has not paid the Marina charges and the boat is now presumed to be abandoned. Therefore, I am requesting that you authorize the sale of the boat at auction so that the City may recover the "Marina charges".

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1/25/10 Oak Harbor, Washington
Date and Place of Signing


Mack Funk, Harbormaster

RESOLUTION No. _____

RESOLUTION AUTHORIZING SALE OF A BOAT FOR "MARINA CHARGES"

WHEREAS, the City Council duly held a public meeting on _____, 2010, wherein the City Council considered whether or not a vessel located in the Oak Harbor Marina is abandoned; to wit:

Vessel ID WN 2961 P

and having found that:

- The vessel was moored or stored at the Oak Harbor Marina;
- Moorage charges owing on the vessel were not paid in full within 90 days from the time the owner of the vessel was notified by registered mail:
 1. that charges were owing;
 2. of the owner's right to commence legal proceeding to contest that such charges are owing; and
- the owner has not commenced legal proceedings; and
- the vessel is presumed to have been abandoned by the owner;

and the procedures required by RCW 53.08 have been complied with; now, therefore,

BE IT RESOLVED by the City Council of the City of Oak Harbor that the vessel above-described which has been abandoned by its owner shall be sold at public auction at a time and place to be fixed by the Harbormaster after giving due notice to the listed owner at the last known address and listing the same in a newspaper of general circulation in Island County at least ten (10) days and not more than twenty (20) days before the sale.

PASSED and approved by the City Council this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

Margery Hite
City Attorney

September 29, 2009

Bert Balsz
PO Box 212
Oak Harbor, WA 98277

REGISTERED MAIL AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

RE: Past Due Moorage—Oak Harbor Marina
Account No. 3809
Vessel ID WN2961IP

Dear Mr. Balsz,

This account is again more than sixty (60) days past due. The amount owed as of September 29, 2009 is \$755.50

You should be aware that if this amount is not paid within fifteen (15) days of the date of this letter, your vessel, described above, is subject to seizure by the City of Oak Harbor. You have a right to a hearing to adjudicate whether the amount owed is correct or the securing of the vessel is proper by filing a lawsuit in a court of competent jurisdiction within fifteen (15) days from the date of this letter.

If the full payment is not made or no such lawsuit is filed, the City will seize the vessel and hold it until payment is made and, if payment is not made, may sell the vessel. The city will not accept partial payment.

We hope this will not be necessary.

Yours truly,

CITY OF OAK HARBOR

By _____
Harbormaster

104

ATTACHMENT 3



Oak Harbor Marina
Mack L. Funk, Harbormaster

October 15, 2009

VIA FIRST CLASS AND REGISTERED MAIL—RETURN RECEIPT REQUESTED

Bert Balsz
1731 Stephen St. #1
Oak Harbor, WA 98277

Re: Past Due Moorage - - Oak Harbor Marina
Account No. 3809 Slip # D-35
Vessel ID WN 2961 IP

Dear Mr. Balsz:

The above-referenced vessel has been secured at the Oak Harbor Marina for non-payment of Marina charges. Enclosed is a copy of the Notice fastened to your vessel.

Your vessel will be released at such time as all outstanding fees and charges, including legal fees incurred as a result of the seizure, have been paid in full. Alternatively, if you contest the amount of charges owing, you can post a cash bond or other acceptable security with the City in an amount sufficient to cover all Marina charges owing, including costs of collection. Such bond or security will be held by the City until agreement is reached or disposition is made by a court. You have a right to a hearing to contest these charges. In order to obtain that hearing, you must commence legal proceedings against the City of oak Harbor for the return of your vessel.

The amount owing to date is \$974.77. Failure to pay this amount *in full* or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

Because of the ongoing delinquency of your account, partial payment will no longer be accepted. Your vessel will remain secured and procedures for sale of your boat will continue until and unless the balance owing on your account is paid in full.

We look forward to the prompt payment of outstanding charges and satisfactory resolution of the issues.

Yours truly,

CITY OF OAK HARBOR

By Mack L. Funk
Harbormaster

ATTACHMENT 4

105

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Bert J. Balsz</i></p> <p>B. Received by (Printed Name) <i>BERT J. BALSZ</i></p> <p>C. Date of Delivery <i>10/16/09</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p style="font-size: 1.5em; text-align: center;"><i>Bert Balsz</i> <i>1731 Stephen St. #1</i> <i>Oak Harbor, WA</i> <i>98277</i></p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p> <p style="font-size: 1.2em; text-align: center;"><i>RE 207 818 612</i></p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1500

Registered No.				Date Stamp		
<i>RE207818612</i>						
To Be Completed By Post Office	Reg. Fee	<i>\$10.60</i>		0262 04		
	Handling Charge	<i>\$0.00</i>	Return Receipt			<i>\$2.30</i>
	Postage	<i>\$0.44</i>	Restricted Delivery	<i>\$0.60</i>	10/15/09	
	Received by					
Customer Must Declare Full Value <i>\$0.00</i>			Domestic Insurance up to \$25,000 is included based upon the declared value. International Indemnity is limited. (See Reverse).			
OFFICIAL USE						
To Be Completed By Customer (Please Print) All Entries Must Be In Ballpoint or Typed	FROM	<i>98277</i>				
		<i>OAK HARBOR MARINA</i>				
		<i>865 SE BARRINGTON DR.</i>				
		<i>OAK HARBOR, WA 98277</i>				
	TO	<i>Bert Balsz</i>				
		<i>1731 Stephen St. #1</i>				
	<i>Oak Harbor, WA 98277</i>					

PS Form 3806, Receipt for Registered Mail Copy 1 - Customer
 May 2007 (7530-02-000-9051) (See Information on Reverse)
 For domestic delivery information, visit our website at www.usps.com®

106

NOTICE

**THIS VESSEL HAS BEEN SECURED FOR NON-PAYMENT OF MARINA CHARGES,
AND IS SUBJECT TO SALE BY THE CITY OF OAK HARBOR IF CHARGES ARE
NOT PAID IN FULL.**

**THIS VESSEL MAY BE SOLD AT PUBLIC
AUCTION NINETY DAYS FROM THE DATE
HEREOF TO SATISFY PAYMENT OF MARINA
CHARGES OWED. THE OWNER OF THIS VESSEL
CAN OBTAIN INFORMATION CONCERNING ITS
RELEASE AT:**

**CITY OF OAK HARBOR
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
360-279-4575**

**VESSEL ID WN 2961 IP
SLIP / LOCATION D-35
ATTACHED: DATE 10/15/09 TIME 9 am**

**BY: Mack Funk
Representative, City of Oak Harbor**

**Any attempt to remove this vessel as secured will
result in the
CITY OF OAK HARBOR
filing charges of
BURGLARY - THEFT - CRIMINAL TRESPASS
or other crimes**



Oak Harbor Marina
Mack L. Funk, Harbormaster

February 22, 2010

**VIA First Class and REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Bert Balsz
1731 Stephen St. #1
Oak Harbor, WA 98277

Re: Vessel ID WN 2961 P 1969 Fairline

Dear Mr. Balsz:

The public meeting of the City Council has been re-scheduled for March 23, 2010 at 6 p.m., so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,


Mack L. Funk
Harbormaster

ATTACHMENT 5

108



Oak Harbor Marina
Mack L. Funk, Harbormaster

February 22, 2010

**VIA First Class and REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Julie Ann Smith
1731 Stephen St. #1
Oak Harbor, WA 98277

Re: Vessel ID WN 2961 P 1969 Fairline

Dear Ms. Smith:

The public meeting of the City Council has been re-scheduled for March 23, 2010 at 6 p.m., so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

Mack L. Funk
Harbormaster

ATTACHMENT 5

109

**City of Oak Harbor
City Council Agenda Bill**

Bill No. C/A 69

Date: March 23, 2010

Subject: Sale of Boat Vessel ID #
CF 457 CU, a power
boat

FROM: Steve Powers, Director of Development Services *PCP*
Mack Funk, Harbormaster

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]

Jim Slowik, Mayor

Paul Schmidt, City Administrator

Doug Merriman, Finance Director

Margery Hite, City Attorney approved as to form

PURPOSE

This agenda bill requests City Council approval of a resolution authorizing the sale of a vessel in order to collect unpaid moorage charges.

AUTHORITY

RCW 53.08.320 and Oak Harbor Municipal Code Section 6.36.040 authorize the City to secure vessels for non-payment of charges. Following proper notice to the owner, 90 additional days without payment and subsequent City Council action, the Marina is authorized to conduct a sale of the vessel to recover its costs.

SUMMARY STATEMENT

The vessel was found abandoned at the marina in July 2009. There have not been any payments made. The current balance due is \$351.78. As a result of this non-payment, the vessel was secured by the marina on August 5, 2009 [OHMC 6.36.040 (1)]. The marina attempted to contact the owner via a legal ad that was published on August 19, 2009 that the vessel had been secured by the marina. After securing the vessel, the City must wait for 90 days before seeking authorization to sell the vessel [OHMC 6.36.040 (5)]. The 90 day waiting period has now elapsed.

STANDING COMMITTEE REPORT

The proposed action was reviewed by the Governmental Services Committee at the February 9, 2010 meeting.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION

- Conduct a public meeting.
- Pass a resolution authorizing the Mayor to approve the proposed sale of the vessel.

ATTACHMENTS

1. Memo to Mayor and Council from the Harbormaster
2. Proposed resolution
3. Notice dated August 5, 2009
4. Legal ad dated August 19, 2009

MAYOR'S COMMENTS

OAK HARBOR MARINA
Mack L. Funk, Harbormaster
1401 SE Catalina Drive
Oak Harbor, Washington 98277

MEMORANDUM

TO: Mayor and City Council
FROM: Mack Funk, Harbormaster
RE: Vessel ID CF 457 CU

The boat described above was found at the Oak Harbor Marina in July 2009.

Storage for the vessel is currently \$48.31 per month. No storage payments have been made.

The boat was secured on August 5, 2009, by authorized personnel of the Oak Harbor Marina. A Notice was attached to the boat advising of the seizure.

A legal ad was published in the Whidbey News Times on August 19, 2009 in an effort to locate the vessel owner.

The Notice advised that if the Marina charges were not paid within ninety (90) days the boat would be sold at public auction.

More than ninety (90) days have elapsed since the date of mailing the Notice and the owner has not paid the Marina charges and the boat is now presumed to be abandoned. Therefore, I am requesting that you authorize the sale of the boat at auction so that the City may recover the "Marina charges".

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1/25/10 Oak Harbor, Washington
Date and Place of Signing

Mack Funk
Mack Funk, Harbormaster

RESOLUTION No. _____

RESOLUTION AUTHORIZING SALE OF A BOAT FOR "MARINA CHARGES"

WHEREAS, the City Council duly held a public meeting on _____, 2010, wherein the City Council considered whether or not a vessel located in the Oak Harbor Marina is abandoned; to wit:

Vessel ID CF 457 CU

and having found that:

- The vessel was moored or stored at the Oak Harbor Marina;
- Storage charges owing on the vessel were not paid in full within 90 days from the time the owner of the vessel was notified by legal ad that charges were owing;
- the vessel is presumed to have been abandoned by the owner;

and the procedures required by RCW 53.08 have been complied with; now, therefore,

BE IT RESOLVED by the City Council of the City of Oak Harbor that the vessel above-described which has been abandoned by its owner shall be sold at public auction at a time and place to be fixed by the Harbormaster after giving due notice to the listed owner at the last known address and listing the same in a newspaper of general circulation in Island County at least ten (10) days and not more than twenty (20) days before the sale.

PASSED and approved by the City Council this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

Margery Hite
City Attorney

ATTACHMENT 2

113

NOTICE

THE FOLLOWING VESSEL HAS BEEN SECURED FOR NON-PAYMENT OF MARINA CHARGES, AND IS SUBJECT TO SALE BY THE CITY OF OAK HARBOR IF CHARGES ARE NOT PAID IN FULL.

THIS VESSEL MAY BE SOLD AT PUBLIC AUCTION NINETY DAYS FROM THE DATE HEREOF TO SATISFY PAYMENT OF MARINA CHARGES OWED. THE OWNER OF THIS VESSEL CAN OBTAIN INFORMATION CONCERNING ITS RELEASE AT:

**CITY OF OAK HARBOR
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
360-279-4575**

**VESSEL ID CF 457 CU
SLIP / LOCATION in parking lot on trailer
ATTACHED: DATE 8/5/09 TIME 2:30 pm**

**BY: Mack Funk
Representative, City of Oak Harbor**

**Any attempt to remove this vessel as secured will result in the
CITY OF OAK HARBOR
filing charges of
BURGLARY - THEFT - CRIMINAL TRESPASS
or other crimes**

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
COUNTY OF ISLAND
AFFIDAVIT OF PUBLICATION

In the Matter of Vessel Seized for Non-Payment

LEGAL NOTICE

NOTICE
THE FOLLOWING VESSEL HAS BEEN SECURED FOR NON-PAYMENT OF MARINA CHARGES, AND IS SUBJECT TO SALE BY THE CITY OF OAK HARBOR IF CHARGES ARE NOT PAID IN FULL.

THIS VESSEL MAY BE SOLD AT PUBLIC AUCTION NINETY DAYS FROM THE DATE HEREOF TO SATISFY PAYMENT OF MARINA CHARGES OWED. THE OWNER OF THIS VESSEL CAN OBTAIN INFORMATION CONCERNING ITS RELEASE AT: CITY OF OAK HARBOR
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
360-279-4575

VESEL ID: CF 457

CU
SLIP / LOCATION: in parking lot on trailer
ATTACHED: DATE
8/5/09 TIME 2:30 pm
BY: Mack Funk
Representative, City of Oak Harbor
LEGAL NO.: 259563
Published: Whidbey News-Times, South Whidbey Record, August 19, 2009

STATE OF WASHINGTON
SS.
COUNTY OF ISLAND

The undersigned, being first duly sworn, on oath deposes that she is principal clerk of the WHIDBEY NEWS-TIMES/SOUTH WHIDBEY RECORD a bi-weekly newspaper. That said newspaper has been approved as a legal newspaper by the Superior Court of Island County and it is now and has been for more than six months prior to the date of publication herein after referred to, published in the English language continually as a bi-weekly newspaper in Island County, Washington, and it is now and during all of the said time was printed in an office maintained by said newspaper.

That the annexed is a true copy of all advertisement, with publication dates, as it was published in regular issues (and not in supplemental form) of said newspaper commencing with the issue of August 19, 2009 and ending with the issue of August 19, 2009.

That said newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is the sum of \$58.70.

William Bolles

Subscribed and sworn to me this 19th day of

August 2009

Connie Cross

Notary Public in and for the State of Washington Residing at Oak Harbor
WHIDBEY NEWSPAPER GROUP
P.O. BOX 10
OAK HARBOR, WA 98277

**City of Oak Harbor
City Council Agenda Bill**

Bill No. d/A 6H
Date: March 23, 2010
Subject: Bid Award-Regenerative
Street Sweeper

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda item is to authorize the purchase of one regenerative street sweeper.

AUTHORITY

OHMC 2.320.040 Competitive bidding – Materials, supplies and equipment requires that the City staff solicit competitive bids for any purchase of material, supplies and equipment where the cost thereof exceeds \$30,000 except under certain specific circumstances.

SUMMARY STATEMENT

In November of 2009, the City of Oak Harbor was awarded a \$50,000 grant by the Department of Ecology from the new Phase II Stormwater Pass-through Program. The purpose of this grant is to provide assistance to local cities to meet new requirements resulting from the NPDES permit. This grant does not require match and the funds received must be used by June 30, 2011.

Stormwater regulations have taken a dramatic turn in recent years in order to protect the Puget Sound. Many of the changes have to do with maintenance on surface streets and require the City to sweep the streets on a regular basis.

Currently the City owns a 2003 Elgin Pelican mechanical sweeper. This mechanical sweeper is not as efficient as a vacuum sweeper and does not meet today's standards for picking up fine particulates as per the NPDES Phase II permit requirements. As the City moves forward in allowing Low Impact Development projects which utilize pervious pavement and pervious concrete, the need for a vacuum sweeper to suction material from the pores of those surfaces to allow infiltration becomes imperative.

Staff researched the technologies available on vacuum sweepers and witnessed demonstrations of several makes and models of vacuum sweepers. Based on the knowledge and information staff received from their research and the equipment demonstrations, staff prepared a set of specifications for a vacuum sweeper that will meet the needs of the City.

Because the cost of a sweeper exceeds \$30,000 a formal bid was required under OHMC

2.320.040. A request for bids was published in the Seattle Daily Journal of Commerce and in the Whidbey News Times. The bid solicitation requested an option to trade in the 2003 Elgin Pelican Sweeper. Bid specifications were requested by and provided to six vendors.

On February 22, 2010, three formal bids were received and opened. In order to determine the lowest responsible bidder, staff evaluated each bid based on objective factors including trade in, accuracy and compliance with the specifications. The results have been included in the chart below:

VENDOR	BID PRICE	TRADE IN	SALES TAX	GRAND TOTAL
Enviro-Clean Equipment	\$188,605.00	\$30,000.00	\$13,798.64	\$172,403.64
Owen Equipment	\$194,000.00	\$20,000.00	\$16,530.00	\$190,530.00
Clyde West	\$178,080.00	None	\$17,451.84	\$195,531.84

Staff has determined that Enviro-Clean Equipment is the lowest most responsible bidder.

Funds are available through a \$50,000.00 grant obtained from the Department of Ecology by the City in November of 2009. The additional funds necessary have been reserved in the 502 Equipment Rental Replacement Fund.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on March 4, 2010.

RECOMMENDED ACTION

Award the bid for the purchase of one regenerative sweeper to Enviro-Clean Equipment in the amount of \$172,403.64.

ATTACHMENTS

MAYOR'S COMMENTS

**City of Oak Harbor
City Council Agenda Bill**

Agenda Bill No. 7
Date: March 23, 2010
Subject: Proposed Ordinance Banning Public
Nudity

FROM: William H. Hawkins, Assistant City Attorney

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

SUMMARY STATEMENT:

Purpose: The purpose of this ordinance is to ban public nudity.

Description: The proposed ordinance would ban public nudity, with appropriate exemptions for any child under age ten (10) years of age, breastfeeding, nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities, nudity within a hospital or other medical facility for health-related purposes, and for a licensed entertainer performing in an adult entertainment establishment upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron.

Policy considerations: For many years, public lewdness, obscenity and nudity have been regulated by Washington state statutes regarding moral nuisance, public nuisance, and indecent exposure. Until recently, these laws supported enforcement measures satisfactorily. However, in recent months, several Washington jurisdictions have experienced shortcomings with existing laws as applied to "bikini baristas" and similar forms of activity. Some jurisdictions have found it necessary and advisable to adopt local ordinances banning public nudity.

Public nudity itself is conduct subject to regulation. *Erie v. PAP's AM*, 529 U.S. 277 (2000); *O'Day v. King County*, 109 Wn.2d 796 (1988); *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997). A ban on public nudity is a content-neutral restriction that regulates conduct, not expression. *Id.*

Oak Harbor has historically banned public nudity under existing laws. An ordinance specifically and expressly banning public nudity is not intended to prohibit conduct not already prohibited under existing laws or to be a stricter standard, but merely to facilitate enforcement.

Proposed Ban on Public Nudity
Agenda Bill - 1
March 23, 2010

Appropriate exemptions are incorporated into the proposed ordinance concerning activity that would not annoy, injure or endanger the health safety and welfare of the community. These include breastfeeding, children under ten (10) years of age, nudity within a locker room or a health care facility. An exemption is also incorporated concerning nude dancing by a licensed entertainer on a raised stage in an adult entertainment establishment and removed at least ten (10) feet from the nearest patron, because of the constitutional protection that conduct may receive as nude expression. See Memo to Oak Harbor City Council regarding Proposed Ordinance to License and Regulate Adult Entertainment.

Budget consideration: Because public nudity has historically been banned in Oak Harbor under existing Washington state laws, and because no stricter or different standard would be established, no increase or decrease in law enforcement service is expected. If anything, it is anticipated that enforcement of a ban on public nudity would be facilitated under the proposed ordinance.

STANDING COMMITTEE REVIEW:

The ban on public nudity was discussed at the Government Services Committee meeting on March 9, 2010.

RECOMMENDED ACTION:

1. Hold public hearing
2. Adopt proposed ordinance banning public nudity

ATTACHMENTS:

1. Proposed Ordinance Banning Public Nudity
2. Legal Memorandum for the Record – Ban on Public Nudity

MAYOR'S COMMENTS:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 6.70 ENTITLED "NUDITY IN PUBLIC PLACES" TO TITLE 6 OF THE OAK HARBOR MUNICIPAL CODE

WHEREAS, the appearance in public of any person in a nude condition would annoy, injure or endanger the comfort, repose, health or safety of others, and offend decency and it detrimental to the public health, safety and welfare and leads to the debasement of both women and men; and

WHEREAS, public lewdness, obscenity and indecent exposure have been regulated by the state of Washington for many years; and

WHEREAS, incidents involving public nudity, lewdness, obscenity and indecent exposure have not been tolerated in the City of Oak Harbor but have been consistently enforced under Washington State law; and

WHEREAS, it is appropriate and desirable for the City of Oak Harbor to adopt an ordinance declaring in express terms what has impliedly been prohibited by state law for a number of years; and

WHEREAS, a ban on public nudity is a content neutral restriction that regulates conduct, not expression under the First Amendment to the U.S. Constitution or Article I, Section 5 of the Washington State Constitution;

WHEREAS, a prohibition against public nudity is not intended to apply to any child under ten (10) years of age, any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age, nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities, or nudity within a hospital clinic or other similar medical facility for health related purposes; or to a licensed entertainer performing in an adult entertainment establishment upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 6.70 entitled "Nudity in Public Places" to Title 6 of the Oak Harbor Municipal Code to read as follows:

**CHAPTER 6.70
NUDITY IN PUBLIC PLACES**

Sections:

- 6.70.010 Definitions.
- 6.70.020 Nudity Prohibited.
- 6.70.030 Violation - Penalty.
- 6.70.040 Violation - Nuisance Declared.

6.70.010 Definitions. The following words and terms shall have the meanings which follow:

- (1) "Nude condition or nudity" means the display or exposure of the human male or female genital area, pubic hair or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola; the exposure of any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.
- (2) "Person" means a natural person of either gender or any corporation, partnership or association.
- (3) "Public place" means any public place including all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

6.70.020 Nudity Prohibited. No person shall intentionally appear, or intentionally cause the appearance or suffer the appearance of another in any public place in a nude condition or state of nudity; Provided, that the standards established in this Chapter shall not be construed to restrict or prohibit the following activities or products:

- (1) Any child under ten (10) years of age; or
- (2) Any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age; or
- (3) Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities; or
- (4) Nudity within a hospital, clinic, or other similar medical facility for health-related purposes; or
- (5) A licensed entertainer performing in an adult entertainment establishment upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron.

6.70.030 Violation - Penalty. Any person convicted of violating this Chapter, or any part hereof, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in jail for a period not exceeding ninety (90) days, or by both such fine and imprisonment.

6.70.040 Violation - Nuisance Declared. Any violation of this Chapter is declared to be a public nuisance and, upon any violation thereof, the city attorney may commence an action for the abatement, removal and enjoinder of such nuisance.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

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

PASSED by the City Council this ____ day of _____, 2010.

APPROVED by its Mayor this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

ORDINANCE BANNING PUBLIC NUDITY
LEGAL MEMORANDUM FOR THE RECORD

TO: Oak Harbor City Council
FROM: William H. Hawkins
Assistant City Attorney
RE: Proposed Ordinance Banning Public Nudity
DATE: March 18, 2010

ISSUE PRESENTED: Whether it is necessary or desirable for the City to adopt an ordinance banning public nudity.

SHORT ANSWER: Recent experience in other Washington municipalities and local jurisdictions has demonstrated that reliance on existing Washington state law regarding moral nuisance, public nuisance and indecent exposure to regulate various forms of public nudity is misplaced, and that more specific legislation is needed.

DISCUSSION: For many years, public lewdness, obscenity and nudity have been regulated by Washington state statutes regarding moral nuisance, public nuisance, and indecent exposure. Until recently, these laws supported enforcement measures satisfactorily. However, in recent months, several Washington jurisdictions have experienced shortcomings with existing laws as applied to “bikini baristas” and similar forms of activity. Some jurisdictions have found it necessary and advisable to adopt local ordinances banning public nudity.

Public nudity itself is conduct subject to regulation. *Erie v. PAP's AM*, 529 U.S. 277 (2000); *O'Day v. King County*, 109 Wn.2d 796 (1988); *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997). A ban on public nudity is a content-neutral restriction that regulates conduct, not expression. *Id.*

Oak Harbor has historically banned public nudity under existing laws. An ordinance specifically and expressly banning public nudity is not intended to prohibit conduct not already prohibited under existing laws or to be a stricter standard, but merely to facilitate enforcement.

Appropriate exemptions are incorporated into the proposed ordinance concerning activity that would not annoy, injure or endanger the health safety and welfare of the community. These include breastfeeding, children under ten (10) years of age, nudity within a locker room or a health care facility. An exemption is also incorporated concerning nude dancing by a licensed entertainer on a raised stage in an adult entertainment establishment and removed at least ten (10) feet from the nearest patron, because of the constitutional protection that conduct may receive as nude expression. See Memo to Oak Harbor City Council regarding Proposed Ordinance to License and Regulate Adult Entertainment.

**City of Oak Harbor
City Council Agenda Bill**

Agenda Bill No. 8
Date: March 23, 2010
Subject: Adult Entertainment Licensing and
Regulation Ordinance

FROM: William H. Hawkins, Assistant City Attorney

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

 Jim Slowik, Mayor
Paul Schmidt, City Administrator
Doug Merriman, Finance Director
Margery Hite, City Attorney, as to form

SUMMARY STATEMENT:

Description/Purpose: The purpose of this ordinance is to address the appropriate licensing and regulation of the conduct and operation of a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution and Article I, Section 5, of the Washington State Constitution. However, there are well documented negative secondary effects associated with adult entertainment in the form of impacts on crime, neighborhoods, property values and increased cost of municipal services. Local governments are authorized to impose licensing and conduct and operation regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for use after the imposition of the regulations. The proposed ordinance makes the following changes to the Oak Harbor Municipal Code:

- (1) It authorizes the City to investigate and in appropriate cases issue licenses to owners and operators of adult entertainment establishments, the managers of the establishments and the entertainers.
- (2) The ordinance imposes standards of conduct and operation and regulates adult entertainment concerning attire, minimum distance between entertainers and patrons, prohibits sexual contact between entertainers and patrons, prohibits direct tipping of entertainers and, imposes standards on the interior layout of adult entertainment establishments, imposes an age minimum for employees, entertainers and patrons, and prohibits the sale of alcoholic beverages in adult entertainment establishments.

The ten (10) foot separation is intended to mitigate the negative secondary effects of adult entertainment including prostitution and other illegal activity that has contributed to the profitability of adult entertainment and table dancing and lap dancing.

The standards of conduct and operation are intended to mitigate the negative secondary effects of adult entertainment facilities, by addressing significant criminal activity that has historically and regularly occurred in adult entertainment establishments while still permitting the expressive aspect of stage dancing. The criminal activity associated with adult entertainment includes prostitution, narcotics transactions, breaches of the peace, and organized crime.

Policy considerations: If the City Council determines to regulate this use, it must do so in light of well settled decisions of the U.S. Supreme Court, other federal courts and the Washington appellate courts on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied adult entertainment and determined that there are negative impacts upon neighborhoods, property values and increased municipal services associated with adult entertainment establishments, in addition to associated criminal activity. The City Council may rely on the experiences of other jurisdictions and on findings in appellate court decisions in determining the existence of negative secondary impacts.

The proposed ordinance regulates and licenses adult entertainment establishments as a way of minimizing the negative secondary impacts of adult entertainment establishments.

Budget consideration: This ordinance is not anticipated to have any budget impacts.

STANDING COMMITTEE REVIEW:

Regulation of adult entertainment was discussed at the Public Safety Standing Committee on February 18, 2010 and at the Government Services Standing Committee on March 9, 2010.

RECOMMENDED ACTION:

1. Hold public hearing.
2. Adopt proposed ordinance regulating adult entertainment.

ATTACHMENTS:

1. Proposed ordinance regulating adult entertainment.
2. Legal Memorandum for the Record – Adult Entertainment Licensing Ordinance

MAYOR'S COMMENTS:

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Adult Entertainment Licensing and
Regulation Agenda Bill - 2
March 23, 2010 meeting

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 5.20 ENTITLED "ADULT ENTERTAINMENT" TO TITLE 5 OF THE OAK HARBOR MUNICIPAL CODE

WHEREAS, adult entertainment establishments require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of Oak Harbor; and

WHEREAS, the city council find that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing, documented evidence that adult entertainment establishments because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the down grading of property values; and

WHEREAS, the city council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, protect the property values and character of the surrounding neighborhoods; and

WHEREAS, the city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, Section 5 of the Washington State Constitution, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment businesses;

Pursuant to the authority granted by the Constitution and the legislature of the state of Washington; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 5.20 entitled "Adult Entertainment" to Title 5 of the Oak Harbor Municipal Code to read as follows:

CHAPTER 5.20 ADULT ENTERTAINMENT

Sections:

- 5.20.010 Findings of Fact.
- 5.20.020 Definitions.
- 5.20.030 Adult entertainment establishment license.
- 5.20.040 License for managers and entertainers.
- 5.20.050 License fees.
- 5.20.060 License prohibited to certain classes.
- 5.20.070 License applications.
- 5.20.080 License - Applicant investigation.
- 5.20.090 Issuance of licenses.
- 5.20.100 License - Posting and display.
- 5.20.110 License - Denial, revocation, or refusal to renew - Grounds.
- 5.20.120 Suspension or revocation of establishment license.
- 5.20.130 Filing of application.
- 5.20.140 License conditions.
- 5.20.150 Violation of license conditions.
- 5.20.160 Revision of license conditions.
- 5.20.170 Appeal to court.
- 5.20.180 Continuation of business while complaint hearing decision pending.
- 5.20.190 Standards of conduct and operation.
- 5.20.200 Physical layout of premises.
- 5.20.210 Permission to inspect.
- 5.20.220 Public nuisance.
- 5.20.230 Non-public areas.
- 5.20.240 Additional requirements for adult entertainment establishments.
- 5.20.250 List of entertainments - Fees.
- 5.20.260 Notice to customers.
- 5.20.270 Activities not prohibited.
- 5.20.280 Manager on premises.
- 5.20.290 Hours of operation.
- 5.20.300 Persons under eighteen (18) years of age prohibited.
- 5.20.310 Locking entrance unlawful.
- 5.20.320 Alarm system at entrance - Unlawful.
- 5.20.330 Warning of approach of police - Lookouts.
- 5.20.340 Warning that police are approaching - Unlawful.
- 5.20.350 Presence in place where warning given.
- 5.20.360 Locking rooms.
- 5.20.370 Presence in locked rooms.
- 5.20.380 Permitting alarm system unlawful.
- 5.20.390 Exemption from Chapter

5.20.010 Findings of Fact. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the council,

and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M., TDA "Kandyland"*, 529 U.S. 277 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 121 S.Ct. 1223 (2001), *Wise Enterprises, Inc., v. Athens-Clarke County Georgia*, No. 99-8265 (11th Circuit Court of Appeals 2000), *Sammy's v. City of Mobile*, No. 96-7073 (11th Circuit Court of Appeals 1998), *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997), *World Wide Video v. Tukwila*, 117 Wn.2d 382 (1991), *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135 (1986), *Colacurcio v. City of Kent*, 163 F. 3d 545 (1998), *DCR, Inc., v. Pierce County*, 92 Wn.App. 660 (1998), and on studies in other communities including, but not limited to, Bellevue, Burien, Everett, Shoreline, Lynnwood, Tukwila, SeaTac, Federal Way, Tacoma, and Seattle, the council hereby adopt the following Findings of Fact:

- (1) The city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor.
- (2) The secondary effects of the activities defined and regulated in this ordinance are detrimental to the public health, safety, morals, and general welfare of the citizens of the city and, therefore, such activities must be regulated.
- (3) Regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.
- (4) Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution, and related crimes. Concerns about crime and public sexual activity are legitimate and compelling concerns of the city which demand reasonable regulation of adult entertainment establishments in order to protect the public health, safety, and general welfare of its citizens, including a prohibition against direct contact between entertainers and patrons, a ten (10) foot minimum distance between entertainers and patrons, restricting nude dancing to stage raised 18 inches above the floor, and a ban on direct tipping of entertainers, as evidenced in Pierce County, the City of Kent, the City of Bellevue and the County of San Diego County in particular.
- (5) Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators don't knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- (6) It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that such entertainers have not assumed a false name which would make regulation of the entertainer difficult or impossible.

- (7) It is necessary to have a licensed manager on the premises of establishments offering adult entertainment at such times as such establishments are offering adult entertainment, so there will at all necessary times be an individual responsible for the overall operation of the adult entertainment establishment, including the actions of patrons, entertainers, and other employees, and to ensure a design, layout and sufficient lighting to permit a manager to effectively monitor activity at all times, as evidenced in Spokane and Tukwila in particular.
- (8) The license fees required in this chapter are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the city in regulating the adult entertainment industry.
- (9) Hidden ownership interests for the purpose of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white-collar crime elements. In order for the city to effectively protect the public health, safety, morals, and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the city be fully apprised of the actual ownership of adult entertainment establishments and the identities and backgrounds of persons responsible for management and control of the adult entertainment establishments, as evidenced in Tukwila in particular. P:\LGLA\WORK\RES-ORD2010\Adult Entertainment Licensing Ord #2.docP:\LGLA\WORK\RES-ORD2010\Adult Entertainment Licensing Ord #2.doc
- (10) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in the illegal and unsanitary sexual activity from occurring in adult entertainment establishments.
- (11) Requiring licensees of adult entertainment establishments to keep information regarding current employees and certain past employees will help reduce the incidents of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- (12) The general welfare, health, morals and safety of the citizens of Oak Harbor will be promoted by the enactment of this ordinance.
- (13) It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, but rather to enact content neutral reasonable time, place, and manner regulations which address the compelling interests of the city in mitigating the secondary effects of adult entertainment establishments.

5.20.020 Definitions. For the purposes of Chapter 5.20 OHMC, the words and phrases used in this section shall have the following meanings, unless context indicates otherwise:

- (1) "Adult entertainment" shall mean any of the following:

- (a) Any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (b) Any exhibition, performance, or dance of any type conducted on a premises where such exhibition, performance, or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation, or relation to the following specified sexual activities:
 - (i) Human genitals in a state of sexual stimulation or arousal;
 - (ii) Acts of human masturbation, sexual intercourse, or sodomy;
 - (iii) Fondling or other erotic touching of human genitals, pubic area, buttocks, or female breast.
- (2) "Adult entertainment establishment" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises.
- (3) "Applicant" shall mean the individual or entity seeking an adult entertainment business.
- (4) "Applicant control persons" shall mean all partners, corporate officers, and directors, and any other individuals in the applicant's business organization who hold a significant interest in the adult entertainment establishment, based on responsibility for management of the adult entertainment business.
- (5) "Development Services Department" shall mean the city of Oak Harbor development services department.
- (6) "Employee" shall mean any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any adult entertainment establishment.
- (7) "Entertainer" shall mean any person who provides live adult entertainment, whether or not a fee is charged or accepted for such entertainment.

- (8) "Manager" shall mean any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment establishment.
- (9) "Operator" shall mean any person operating, conducting, or maintaining an adult entertainment establishment.
- (10) "Picture machine" shall mean any machine, instrument, or device showing moving pictures, slides, plain, colored or three-dimensional pictures, or any picture device of a similar nature depicting sexual conduct or specified anatomical areas, the operation of which is made possible by the insertion or placing of any coin, plate, disc, or slug into the slot or other receptacle, or by the payment directly or indirectly of any consideration to another for such purpose.
- (11) "Sexual conduct" shall mean acts of:
 - (a) sexual intercourse within its ordinary meaning and occurs upon any penetration, however slight; and also means any penetration of the vagina or anus, however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes;
 - (b) any contact between persons involving the sex organs of one person and the mouth or anus of another;
 - (c) masturbation, manual or instrumental, of oneself, or of one person by another.
- (12) "Specified anatomical areas" shall mean and include any of the following:
 - (a) Human genitals, pubic region, buttocks, anus, or female breasts with less than a fully opaque covering of any part of the nipple or areola; or
 - (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

5.20.030 Adult entertainment establishment license.

- (1) It is unlawful for any person to operate or maintain an adult entertainment establishment in the city of Oak Harbor unless the owner, operator or lessee thereof has obtained from the development services director a license to do so, to be designated an "adult entertainment establishment license".
- (2) It is unlawful for any person to knowingly allow the use of his or her property for the operation of an adult entertainment establishment that is not licensed under this Chapter.

- (3) It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of, an unlicensed adult entertainment establishment.

5.20.040 License for managers and entertainers.

- (1) It is unlawful for any person to work as a manager at an adult entertainment establishment without first having obtained from the development services director a license to do so, to be designated as an "adult entertainment manager's license".
- (2) It is unlawful for any person to work as an entertainer at an adult entertainment establishment without having first obtained from the development services director a license to do so, to be designated as an "adult entertainer's license".

5.20.050 License fees. The license year for adult entertainment establishment licenses, adult entertainer's licenses and adult entertainment manager's licenses required under this Chapter shall be from January 1st to December 31st. All license fees shall be payable on an annual basis, which fees shall be as follows:

- (1) Adult entertainment establishment license, Seven Hundred Twenty Dollars (\$720.00) per year;
- (2) Adult entertainer's license, One Hundred Forty-five Dollars (\$145.00) per year; and
- (3) Adult entertainment manager's license, One Hundred Forty-five Dollars (\$145.00) per year.

5.20.060 License prohibited to certain classes. No license authorized under this Chapter shall be issued to:

- (1) a natural person who has not attained the age of eighteen (18) years;
- (2) a partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this Chapter. Such license shall be issued to the manager of the partnership; or
- (3) a corporation, unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

5.20.070 License applications.

- (1) Adult Entertainment Establishment License. All applications for an adult entertainment establishment license shall be submitted in the name of the person proposing to conduct such adult entertainment on the establishment and shall be signed by such person and notarized or certified as true under penalty or perjury. All applications shall be submitted

on a form supplied by the development services director and shall require the following information:

- (a) The name, residence address, home telephone number, date and place of birth, and social security number of the applicant;
- (b) The business name, address and telephone number of the establishment;
- (c) The names, residence addresses, residence telephone numbers, social security numbers and dates of births of any partners, corporate officers and directors;
- (d) Such information as the development services director, by rule, may require concerning the identity of corporate shareholders;
- (e) Addresses of the applicant for the five (5) years immediately prior to the date of application;
- (f) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction, denied, suspended or revoked within the five (5) years immediately preceding the date of the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the date of the action, the jurisdiction that took such action, the reason for the action, and the status of any appeal of the action;
- (g) A description of the business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of application;
- (h) The name of at least one (1) natural person whose name and mailing address, which shall be an address located within the state of Washington, shall appear on the adult entertainment establishment license and who shall receive notices from the development services department;
- (i) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five (5) years preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.

A failure to provide information required by this subsection will constitute an incomplete application and will not be processed.

- (2) Adult Entertainment Manager's or Adult Entertainer's License. All applications for an adult entertainment manager's license or adult entertainer's license shall be signed by the applicant and notarized or certified as true under penalty of perjury. All applications shall

be submitted on a form supplied by the development services director, and shall require the following information:

- (a) The applicant's name, home address, home telephone number, date and place of birth, social security number, proof of U.S. citizenship or of legal residency and the right to work in Washington State, and any stage names or nicknames used in entertaining;
- (b) The name and address of each business at which the applicant intends to work as a manager or entertainer;
- (c) The applicant shall present documentation that he or she has attained the age of eighteen (18) years. Any of the following shall be accepted as documentation of age:
 - (i) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
 - (ii) A state-issued identification card bearing the applicant's photograph and date of birth;
 - (iii) An official passport issued by the United States of America;
 - (iv) An immigration card issued by the United States of America;
 - (v) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency; or
 - (vi) Such other form of identification as the development services director deems, by rule, to be acceptable;
- (d) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction denied, suspended or revoked within the five (5) years immediately preceding the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the jurisdiction that took such action, the reason for the action, the date of the action and the status of any appeal of the action;
- (e) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five (5) years immediately preceding the date of the application; and if so, the nature of the crime and the date, location, and nature of the judicial action take; and

Failure to provide information required by this subsection will constitute an incomplete application and will not be processed.

- (3) **Duty to Supplement.** Each license applicant for, or holder of, a license issued under this Chapter shall modify or supplement application information on file with the development services director, within ten (10) days of a change, if the information changes materially from what is stated on the applicant or holder's license application.

5.20.080 License - Applicant investigation. The development services director shall investigate an application for an adult entertainment establishment license required by requesting criminal records and a confirmation of zoning compliance from appropriate city agencies. The development services director shall investigate an application for an adult entertainment manager's or adult entertainer's license by requesting criminal records from appropriate city agencies.

5.20.090 Issuance of licenses.

- (1) **Adult Entertainment Establishment License.** Within thirty (30) days of receipt by the development services director of a complete application for an adult entertainment establishment license, including all submittals and information required by this Chapter, the development services director shall issue or deny the adult entertainment establishment license. If the development services director fails to issue or deny the license within the thirty (30) day period, the license is deemed issued on the last day of the thirty (30) day period and the applicant may operate the adult entertainment establishment for which the license was sought, subject to all other provisions of this Chapter.

- (a) The development services director shall deny the adult entertainment establishment license for any of the following reasons, and shall notify the applicant in writing of the reasons for the denial and the opportunity to appeal if the development services director finds:
 - (i) the application does not meet the requirements of this Chapter;
 - (ii) the applicant, his or her employee, agent, partner, director, officer, or manager has knowingly made any false, misleading or fraudulent omission or statement of material fact in the application for a license, or in any report or record required to be filed with the development services director;
 - (iii) the applicant, and all employees, agents, partners, directors, officers, or managers of the applicant have not attained the age of eighteen (18) years, as provided by OHMC 5.20.060;
 - (iv) the applicant or his or her partner, director, or officer is currently the subject of a final adult entertainment establishment license revocation

order issued pursuant to this Chapter which became final less than one (1) year prior to the pending application.

- (b) If the development services director denies an adult entertainment establishment license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the development services director shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to operate the establishment to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license as set forth in OHMC 5.20.030 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.
- (2) Adult Entertainment Manager's and Adult Entertainer's Licenses. The development services director shall issue or deny an adult entertainment manager's license or an adult entertainer's license on the same business day in which a complete application, including all submittals and information required by this Chapter, is received.
- (a) The development services director shall deny an application for an adult entertainment manager's license or an adult entertainer's license for any of the following reasons, and shall notify the applicant in writing of the grounds for the denial and the opportunity to appeal, if the development services director finds:
 - (i) the applicant is less than eighteen (18) years old;
 - (ii) the applicant has failed to provide any of the submittals or information required to be supplied according to this Chapter;
 - (iii) the applicant has knowingly made any false, misleading or fraudulent statement or omission of material fact in the application for a license; or
 - (iv) the applicant is currently the subject of a final license suspension order issued pursuant to this Chapter or is the subject of a license revocation order issued pursuant to this Chapter which became final less than one (1) year before the pending application.
 - (b) If the development services director denies an adult entertainment manager's license or an adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the development services director shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final

outcome of the appeal. A license applicant must pay the fee for an adult entertainment manager's license or an adult entertainer's license as set forth in OHMC 5.20.050 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.100 License - Posting and display.

- (1) Every adult entertainer shall post his or her license in his or her work area so it is readily available for inspection by city authorities responsible for enforcement of this Chapter.
- (2) Every person, corporation, partnership, or association licensed under this Chapter as an adult entertainment establishment or adult entertainment manager shall post such license in a conspicuous place and manner on the licensed premises.
- (3) Each manager and/or operator shall be responsible for maintaining a daily log, on a form provided by the development services director, of all employees, entertainers, and managers working at the adult entertainment establishment each day. The log shall list the employee's, entertainer's and manager's name as it is listed on his/her license, license number, stage name, if any, the time he/she arrived at the adult entertainment establishment, and the time he/she left the adult entertainment establishment. Each employee, entertainer and manager shall sign his/her name in the daily log each time he/she arrives and leaves the adult entertainment establishment.
- (4) It is unlawful for any person to violate any of the provisions of this section.

5.20.110 License - Denial, revocation, or refusal to renew - Grounds. A license may be denied, suspended, revoked, or not renewed for violation of any ordinance or law that regulates licensed activity in order to further the public interest in public health, safety, and welfare. A license may also be denied, suspended, revoked, or not renewed upon a finding that any applicant or licensee, or any owner, officer or agent thereof:

- (1) has omitted to disclose any material fact necessary to make a statement not misleading, in any application for the license; or
- (2) has charges pending against her/him or has been convicted of a crime or offense that directly relates to the activity for which the license is required, and the time elapsed since the date of conviction or release from jail or prison, whichever is more recent, is less than ten (10) years; or has been convicted of several crimes including at least one (1) within the last ten (10) years; provided, however, that any licensee whose license is revoked because of charges pending against her/him may engage in the activity for which the license is required, pending a final decision on the charges; or

- (3) has been subject to an adverse finding in any judgment or order that directly relates to the activity for which the license is required, in any judicial or administrative proceeding in which fraud, deceit, coercion, breach of trust, unfair method of competition, unfair or deceptive trade act or practice, or assertion of unconscionable contractual provisions, or other similar act, practice, or conduct, on the part of the licensee-applicant is proven, and the time elapsed since the judgment or order is less than ten (10) years; or
- (4) has violated or failed to comply with any applicable provisions of the OHMC or rule or regulation prescribed under this subtitle; provided, that failure to obtain a license shall not be grounds for license denial; or
- (5) is in default in any payment of any fee or tax required under the Oak Harbor Municipal Code; or
- (6) has been subject to an adverse finding in any judgment or order, in any judicial or administrative proceeding for violation of any provision of a city ordinance or rule or regulation prescribed thereunder pertaining to fire, building, health, sanitation, zoning, weights and measures, consumer protection, environmental protection, or any other ordinance or law and that is applicable to the licensed activity or licensed establishment; or
- (7) has been determined to have discriminated against any person because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, in the course of licensed activity, in violation of a city ordinance, law, rule or regulation prescribed thereunder; or
- (8) has violated or failed to comply with any final order of the development services director or hearing examiner; or
- (9) has failed to complete the application for a license as required by the OHMC; or
- (10) has failed to obtain a license or permit required by state or other law necessary to engage in the licensed activity; or
- (11) has failed to comply with Chapters 49.12 and 26.28 RCW, and rules and regulations promulgated pursuant thereto, regarding employment of minors; or
- (12) has permitted or authorized his/her agent to violate or fail to comply with any provision of the OHMC; or
- (13) has allowed the property at which the business is located to be determined by a court to be a chronic nuisance property as provided by law.

5.20.120 Suspension or revocation of establishment license. As now or hereafter amended, an adult entertainment establishment license may be suspended or revoked upon a finding that:

- (1) the licensee permitted or authorized his or her employees, agents, entertainers or managers to violate any of the provisions of this Chapter; or
- (2) the adult entertainment manager permitted or authorized any violation of any of the provisions of this Chapter by any person;
- (3) the licensee is convicted of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises, or the conviction of any of the licensee's servants, agents, or employees of any crime or offense involving prostitution, promoting prostitution or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the licensed premises when the licensee knew or should have known of the violations committed by the licensee's servants, agents, or employees;
- (4) the Oak Harbor Fire Department, Oak Harbor Police Department, Oak Harbor Public Works Department or the Island County Health Department find that any condition exists upon the premises of an adult entertainment establishment which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this Chapter, pending a hearing in accordance with this Chapter. The official shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee and the development services department of the right to appeal the suspension to the city council under the same appeal provision set forth in this Chapter; provided, however, that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal.

5.20.130 Filing of application.

- (1) Application for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be made to the development services director, together with a receipt from the development services director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in Chapter 5.20 OHMC, unless stayed by filing of a judicial appeal within thirty (30) days of the city council decision appealed.

- (2) If the development services director denies an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the development services director shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to continue as an adult entertainment establishment or to continue to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license as set forth in this Chapter at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.140 License conditions.

- (1) Upon receipt of an application for an adult entertainment establishment license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).
- (2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of an adult entertainment establishment. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as an adult entertainment establishment.
- (3) The chief of police shall report to the city council the result of his/her investigation and make recommendations concerning any conditions that should be placed upon the adult entertainment establishment license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the establishment to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the adult entertainment establishment license.
- (4) The city council shall hold a public hearing with respect to the issuance of the adult entertainment establishment license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the adult entertainment establishment license. Unless the applicant is restricted from holding an adult entertainment establishment license pursuant to this Chapter, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the adult entertainment establishment require mitigation through specified

conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, signing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon.

- (5) The decision of the city council shall be the final decision of the city.

5.20.150 Violation of license conditions.

- (1) A license holder who violates any license condition of his/her adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be subject to civil penalties and to a license suspension or revocation as follows:
- (a) First violation of a license condition: Five Hundred Dollars (\$500.00) fine and/or a license suspension for thirty (30) days per violation;
 - (b) Second violation of same license condition: Seven Hundred Fifty Dollars (\$750.00) fine and a license suspension for ninety (90) days per violation;
 - (c) Third violation of same license condition: One Thousand Dollars (\$1,000.00) fine and revocation for a third violation within any twenty-four (24) month period.
- (2) Time spent serving a suspension shall not be counted in determining the twenty-four (24) month period referred to in this section.
- (3) For an adult entertainment premises licensee, a violation for which an adult entertainment premises license may be suspended or revoked includes a violation of this Chapter a manager, employee, agent, entertainer or any other person, occurring on the premises when the adult entertainment premises licensee knew of or should have known of the violation.
- (4) For an adult entertainment manager's license, a violation for which an adult entertainment manager's license may be suspended or revoked includes a violation of this Chapter by an adult entertainer or other person when the adult entertainment manager knew of or should have known of the violation.
- (5) If a licensee is convicted of committing a crime or offenses involving one of the following occurring on the premises of an adult entertainment establishment, the license shall be revoked:
- (a) A violation of RCW 9A.88.030, 9A.88.070, 9A.88.080 or 9A.88.090;
 - (b) A violation of OHMC 6.05.270;
 - (c) A transaction involving a controlled substance as defined in Chapter 69.50 RCW or OHMC 6.05.470; or

- (d) A violation of Chapter 9A.44 RCW, Sex Offenses or Chapter 9.68A RCW, Sexual Exploitation of Children, or OHMC 6.05.430.
- (6) For an adult entertainment establishment licensee, a conviction for which the adult entertainment establishment license may be revoked includes the conviction of a manager, employee, agent or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment establishment licensee knew of or should have known of the crime or offense.
- (7) For an adult entertainment manager's license, a conviction for which the adult entertainment manager's license may be revoked includes the conviction of an employee or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment manager licensee knew of or should have known of the crime or offense.
- (8) A licensee whose license has been revoked is not eligible to reapply for any license authorized by this Chapter for one (1) year following the date the decision to revoke is final.
- (9) On receipt of a notice of suspension or revocation, the license holder shall promptly deliver the license to the development services director unless an appeal is pending under this Chapter. Upon expiration of a license suspension, the development services director shall return the license to the license holder.
- (10) For purposes of this section, a person "should have known" of a crime or offense or violation of this Chapter, when the person has information which would lead a reasonable person to believe that a crime or offense or violation of this Chapter was occurring or would occur.
- (11) If the development services director determines that a condition exists on an adult entertainment premises which constitutes a threat of immediately serious injury or damage to a person or property, the development services director may immediately suspend an adult entertainment premises license. The development services director shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to a person or property.
- (12) First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.
- (13) The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), up to ninety (90) days in jail, or both such fine and jail time.

5.20.160 Revision of license conditions.

- (1) The city council also reserves to itself the power to revise the conditions of the adult entertainment establishment license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the adult entertainment establishment location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.
- (2) In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least ten (10) days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

5.20.170 Appeal to court. Appeal of any final decision of the city under this Chapter shall be to Superior Court. The city's decision shall be stayed upon appeal filed within thirty (30) days of the city council decision appealed, pending judicial review.

5.20.180 Continuation of business while complaint hearing decision pending.

- (1) Except in the case of summary suspension or revocation, whenever a timely request for hearing on a complaint is filed, a licensee or an applicant for license renewal may engage in the activity for which the license is required, pending decision by the city council. An applicant not licensed in the preceding license year may not engage in the activity for which the license is required pending decision by the city council. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.
- (2) If the development services department denies an adult entertainment establishment license governed by this Chapter, and if the license applicant files a notice of appeal with the city council, the development services director shall immediately issue the license applicant a temporary license. The temporary license shall authorize the license applicant to operate an adult entertainment establishment or perform as a manager or entertainer, in the same manner as if the license had been granted, pending the city council's decision.
 - (a) If the city council affirms the development services director's license denial, the temporary license shall remain in effect pending a motion for reconsideration before the city council and, in addition

- (i) if the license applicant does not timely file for judicial review, then only until the expiration of the time allowed to file an application for a writ of review under Chapter 7.16 RCW; or
 - (ii) if the license applicant does timely file an application for a writ of review, then only until the court either issues a writ or denies the writ application.
- (b) If the city council dismisses the adult entertainment establishment license denial with prejudice, the development services department shall immediately issue an adult entertainment license.
 - (c) If the city council dismisses the adult entertainment denial without prejudice, the temporary license shall remain in effect for five (5) additional business days, at the end of which time the development services department must either reissue a denial or issue an adult entertainment establishment license. If the development services director reissues the denial, then the temporary license will continue in effect according to the procedures set forth in subsection (2) of this section.
 - (d) If a license applicant is issued a temporary license, the license applicant shall pay the fee charged for an adult entertainment establishment license under this Chapter.

5.20.190 Standards of conduct and operation. The following standards of conduct must be adhered to by employees of any adult entertainment establishment:

- (1) No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume, or clothing so as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic regions, anus, buttocks, vulva, or genitals, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron.
- (2) No employee or entertainer mingling with patrons shall be unclothed or in less than opaque and complete attire, costume, or clothing as described in subsection (1) of this section, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.
- (3) No employee or entertainer mingling with patrons shall wear or use any device or covering exposed to view which simulates the breast with less than a fully opaque covering of any part of the nipple or areola, vulva, genitals, anus, or buttocks.
- (4) No employee or entertainer shall caress, fondle, or erotically touch any patron. No employer or entertainer shall encourage or permit any patron to caress, fondle, or erotically touch any employee or entertainer.

- (5) No employee or entertainer shall perform actual or simulated acts of sexual conduct as defined in this Chapter, or any act which constitutes a violation of Chapter 7.48A RCW, the Washington Moral Nuisances Statute.
- (6) No employee or entertainer mingling with patrons shall conduct any dance, performance, or exhibition in or about the non-stage area of the adult entertainment establishment.
- (7) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance, or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to solicit, demand, accept or receive any form of gratuity offered directly to the entertainer by any patron. Any gratuity offered to any entertainer must be placed into a receptacle provided for receipt of gratuities by the adult entertainment establishment, or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainment establishment shall be placed into a receptacle provided by the manager, and not upon the person or into the clothing of the adult entertainer.
- (8) Separate restrooms shall be maintained for performers, entertainers, managers and employees than for customers and members of the public. Performers, entertainers, managers and employees shall not be permitted to use restrooms available for customers or members of the public, nor shall customers or members of the public be permitted to use restrooms available for performers, entertainers, managers and employees.
- (9) No viewing equipment shall be installed, maintained or used in any of the restrooms located on the premises.

5.20.200 Physical layout of premises.

- (1) Performance area at adult entertainment establishments. Every place offering adult entertainment shall be physically arranged in such a manner that the performance area where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least ten (10) feet from all areas of the premises to which patrons have access. The stage and the entire interior portion of cubicles, rooms, or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one (1) manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes, or any other obstruction whatsoever.
- (2) Picture machines must be visible and publicly accessible. Every booth, cubicle, or partition utilized or maintained at a picture machine location as the area from which the screen of any picture machine is to be viewed shall be arranged so that any person viewing such picture machine screen shall be visible from the waist down to the floor from without obstruction by the viewing booth, cubicle, or partition. The licensee shall not permit any doors to any publicly accessible area on the premises to be locked during business hours. Every room or area on such premises which is open to the public shall be readily accessible at all times for inspection by any public officer charged with the

enforcement of the provisions of applicable city ordinances or regulations. The licensee shall maintain sufficient illumination generally distributed in all parts of the premises at all times when the picture machine area is open or when the public is permitted to enter or remain on the picture machine premises.

- (3) No activity or entertainment occurring on the premises shall be visible at any time from outside the facility or from any other public place.
- (4) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.
- (5) It is the duty of the licensee of the premises to ensure that at least one licensed manager is on duty and situated in each manager's station at all time that any patron is present inside the premises.

5.20.210 Permission to inspect. An adult entertainment establishment licensee and its manager shall permit the development services director and the personnel from the Oak Harbor Police Department to conduct announced inspections, during hours that the adult entertainment establishment is open to the public, of all exterior and interior areas of the premises open to and used by members of the public and of all books and records required to be kept under this Chapter. The purpose of such inspections is to determine whether the premises are being operated in compliance with the provisions of this Chapter.

5.20.220 Public nuisance. An adult entertainment premises operated, conducted or maintained in violation of laws of the state of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of, any other remedies set forth in this Chapter, commence an action to enjoin, remove or abate such nuisance and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment premises contrary to the provisions of this chapter.

5.20.230 Non-public areas. No member of the public shall be permitted to enter into any of the non-public portions of the adult entertainment establishment, which shall include but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that persons delivering goods and materials, food and beverages or performing maintenance or repairs to the premises or equipment on the premises may be permitted into non-public areas to the extent required to perform their job duties.

5.20.240 Additional requirements for adult entertainment establishments. At any adult entertainment establishment, the following are required:

- (1) Admission must be restricted to persons of the age of eighteen (18) years or older.

- (2) No adult entertainment shall be visible outside the adult entertainment establishment, nor any photograph, drawing, sketch, or other pictorial or graphic representation, which includes lewd matter as defined in Chapter 7.48A RCW, or display of sexually explicit material in violation of RCW 9.68.130.
- (3) Sufficient lighting shall be provided in and equally distributed in and about the parts of the premises which are open to patrons so that all objects are plainly visible at all times. A minimum lighting level of thirty (30) lux horizontal measured at thirty (30) inches from the floor on ten (10) foot centers is hereby established for all areas of the adult entertainment establishment where members of the public are admitted. It shall be the duty of the licensee and the manager to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (4) No viewing room may be occupied by more than one (1) person at a time.
- (5) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (6) No person shall make or attempt to make an opening of any kind between a viewing booths or rooms. The manager shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (7) The licensee shall cause all wall coverings, floor coverings, and ceiling coverings in viewing booths to be non-porous, easily cleanable surfaces with no rugs or carpeting.

5.20.250 List of entertainments - Fees. There shall be posted and conspicuously displayed in the common areas of each place offering adult entertainment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed.

5.20.260 Notice to customers. A sign shall be conspicuously displayed in a common area of the premises which shall read as follows:

"This adult entertainment establishment is regulated by the City. Entertainers are:

- (1) not permitted to engage in any type of sexual conduct;
- (2) not permitted to appear semi-nude or nude, except on stage;
- (3) not permitted to accept tips of gratuities in advance of their performance;
and
- (4) not permitted to accept tips or gratuities directly from patrons while performing upon any stage area."

5.20.270 Activities not prohibited.

- (1) This Chapter shall not be construed to prohibit:
 - (a) plays, operas, musicals, or other dramatic works which are not obscene; or
 - (b) classes, seminars, and lectures held for serious scientific or educational purposes that are not obscene; or
 - (c) exhibitions, performances or dances which are not obscene.
- (2) Whether or not activity is obscene shall be judged by consideration of the following factors:
 - (a) Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex;
 - (b) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010(2)(b);
 - (c) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

5.20.280 Manager on premises.

- (1) A licensed manager shall be on duty at an adult entertainment establishment during the adult entertainment establishment's hours of operation. The name of the manager on duty shall be prominently posted during business hours.
- (2) Any adult entertainment establishment found to be operating without a manager on duty shall be immediately closed until a licensed manager arrives for duty at the adult entertainment establishment pursuant to subsection (1) above.
- (3) The manager shall verify that each entertainer performing while the manager is on duty possesses a current and valid entertainer's license, as required by this Chapter. The manager shall verify that such adult entertainment license is posted in the manner required by this Chapter.
- (4) A manager shall not perform as an entertainer on days during which he or she acts as a manager on duty at an adult entertainment establishment.

5.20.290 Hours of operation. It is unlawful for any adult entertainment establishment to be conducted, operated, or otherwise open to the public between the hours of two o'clock a.m. (2:00 a.m.) and ten o'clock a.m. (10:00 a.m.).

5.20.300 Persons under eighteen (18) years of age prohibited.

- (1) It is unlawful for any person under the age of eighteen (18) years to be in or upon any premises for which an adult entertainment establishment license is required. Only the following types of identification will be accepted as proof of age:
 - (a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
 - (b) A state-issued identification card bearing the applicant's photograph and date of birth;
 - (c) An official passport issued by the United States of America;
 - (d) An immigration card issued by the United States of America;
 - (e) Any other picture identification bearing the applicant's photograph and date of birth by a governmental agency.
- (2) It is unlawful for any owner, operator, manager, or other person in charge of an establishment for which an adult entertainment establishment license is required, to knowingly permit or allow any person under the age of eighteen (18) years to be in or upon such premises.

5.20.310 Locking entrance unlawful. It is unlawful for any person or persons in charge of or having the management of, or being in the employment of, or a member of or guest in, any adult entertainment establishment, either incorporated or unincorporated, to lock, bar, or in any manner obstruct, or to suffer or permit to be locked, barred or in any manner obstructed, the entrance or entrances leading to any room or place in such social club wherein non-intoxicating beverage and/or tobaccos are kept for sale or facilities for social games are maintained, at any time when any person is present therein with one (1) or more persons.

5.20.320 Alarm system at entrance - Unlawful. It is unlawful for any person to construct or cause to be constructed, or to suffer or permit to continue or be maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in any adult entertainment establishment.

5.20.330 Warning of approach of police - Lookouts. It is unlawful for the owner or any person having the management or control or charge of, or in the employment of the owner of, any place in the city of Oak Harbor, or where an adult entertainment establishment is maintained, to employ, station, post, keep, maintain, suffer or permit any person or persons at or near the entrance or entrances thereto, or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, are about to enter, are entering, or have entered such place.

5.20.340 Warning that police are approaching - Unlawful. It is unlawful for any person to give any advice, information or warning, in any manner whatsoever, that police officers are approaching, are about to enter, are entering or have entered, any place in the adult entertainment establishment.

5.20.350 Presence in place where warning given. It shall be unlawful for any person to be with one (1) or more other persons in any adult entertainment establishment, when, with the knowledge of such person at such time any person is employed, stationed, kept, maintained, suffered or permitted at or near the entrance or entrances thereto or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, or are about to enter, are entering, or have entered, such place.

5.20.360 Locking rooms. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be locked, barred, or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.370 Presence in locked rooms. It shall be unlawful for any person to be with one (1) or more other persons in any room or place in any adult entertainment establishment, at any time when the entrance or entrances leading thereto are locked, barred or obstructed in any manner equipped with any alarm or system of alarms.

5.20.380 Permitting alarm system unlawful. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be constructed, or to be continued or maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.390 Exemption from Chapter. No person holding an adult entertainment establishment license, and no manager or employee of any such person, and no entertainer, shall allow alcohol on the premises except for those adult entertainment establishments properly licensed under the Washington State Liquor Control Board.

Any license issued pursuant to this Chapter shall be subject to any applicable rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. In the event of a conflict between the provisions of this Chapter and the applicable rules and regulations of the Washington State Liquor Control Board, the rules and regulations of the Washington State Liquor Control Board shall control.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Finding of Emergency. The city council finds as follows:

1. The Oak Harbor Municipal Code does not presently address the appropriate zone for an adult entertainment business. The closest existing zone is the C-3 Community Commercial zone in which "amusement enterprises" and "places of entertainment" are permitted uses. Principal uses permitted in the C-3 district are also allowed in the Industrial district.
2. Recent inquiries about locating adult entertainment uses in the city create a reasonable expectation that such uses may attempt to locate in the city and would, therefore, locate in the C-3 Community Commercial zone.
3. However, without further refinement, there are parcel locations in the C-3 Community Commercial zone which would abut or fall within a seven hundred and fifty (750) feet radius of religious institutions, schools, and parks or within one hundred (100) feet of residentially zoned neighborhoods. The city council find that locating an adult entertainment facility in such parcel locations would be detrimental to existing churches, schools, parks and residential zones, and that the public safety, welfare and peace dictates that adult entertainment facilities not be located in such proximity with those uses.
4. The city council find the definitions in this ordinance (OHMC 5.20.020) are a necessary element of the interim adult entertainment facilities zoning overlay ordinance and therefore must take effect immediately to protect the public welfare, safety and peace.

Section Four. Effective Date. This city council having found that an emergency exists, OHMC 5.20.020 of this ordinance shall be in full force and effect immediately. The remaining sections of this ordinance shall be in full force and effect five days after publication.

PASSED by a majority plus one of the entire membership of the City Council this _____ day of _____, 2010.

APPROVED by its Mayor this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

ADULT ENTERTAINMENT LICENSING ORDINANCE

LEGAL MEMORANDUM FOR THE RECORD

TO: Oak Harbor City Council

FROM: William H. Hawkins
Assistant City Attorney

RE: Proposed Ordinance to License and Regulate Adult Entertainment

DATE: March 23, 2010

ISSUE PRESENTED: The purpose of this Memo is to identify and discuss the parameters of a lawful response to a request to establish an adult entertainment establishment.

SHORT ANSWER: Because adult entertainment is conduct that has been determined by the United States Supreme Court to be protected by the First Amendment, a municipality may not prohibit adult entertainment establishments. Under the leading U.S. Supreme Court case of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) and the numerous court cases decided in the intervening 24 years, local governments may limit the location of adult entertainment establishments, and may license and regulate the conduct and operation of the establishments in order to prevent crime, protect the city's retail trade, maintain property values, and generally protect the quality of the city's neighborhoods, commercial districts, and the quality of life, but may not suppress the expression of unpopular views by banning them altogether. This proposed ordinance would regulate the conduct and operation of adult entertainment establishments through licensing and the establishment of performance and design criteria that have been shown to minimize the harmful secondary effects of adult entertainment.

Simultaneous to the presentation of this proposed ordinance to license and regulate the conduct and operation of adult entertainment establishments, a second proposed ordinance will be presented regarding zoning, as well as a third proposed ordinance prohibiting public nudity.

DISCUSSION:

The U.S. Supreme Court has held that the First Amendment applies not only to pure speech but also to certain forms of conduct. The Court has consistently held in a long line of cases that nude dancing is a form of conduct protected by the First Amendment to the Constitution, although it "falls only within the outer ambit of the First Amendment's protection." *Erie v. PAP's A.M. "tdba Kandyland"*, 529 U.S. 277 (2000). Even though it "clings to the edge of protected expression", *JJR Inc. v. City of Seattle*, 126 Wn.2d 1 (1995), nude dancing receives

constitutional protection. However, public nudity itself is conduct subject to the police power that can be prohibited. *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997).

At the same time, adult entertainment establishments, including those that offer nude or semi-nude dancing, have been found in many jurisdictions in which they exist, to create adverse secondary effects that are often not controlled by the owners, operators, managers or personnel associated with the establishments. The secondary effects include a wide variety of criminal and unlawful activities which are detrimental to the public health, safety and welfare of a community.

The criminal activity complained of has included the following: breaches of the peace; assaults; criminal contact between entertainers and patrons, between patrons, and between establishment personnel and entertainers; sexually explicit conduct, acts of lewdness and indecent exposure; prostitution, patronizing a prostitute, promotion of prostitution; soliciting, procuring, aiding and abetting, employing, authorizing or causing a sexual performance by a minor; sexual solicitation, molestation or exploitation of minors; contributing to the delinquency of minors; having a minor on the premises where there are materials or performances depicting specified anatomical areas or activities; maintaining a moral nuisance; tax evasion; money laundering.

Adult entertainment establishments have engaged in practices which involve secreting ownership interest for the purpose of skimming profits and avoiding the payment of taxes in the absence of regulations such as those in the proposed ordinance. These hidden ownership interests have, on occasion, been held by individuals and entities reputed to be involved in organized crime. In order for the City to protect the public safety and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the City be fully apprised of the actual operation of adult entertainment establishments and identities and backgrounds of persons responsible for management and control of the adult entertainment establishments.

In deciding whether an ordinance regulating nude or semi-nude dancing (or any other form of protected conduct) is constitutional, the courts first determine what level of scrutiny to apply to the ordinance, which depends on whether the regulation is "related to the suppression of expression" or whether it is "content neutral". If the governmental purpose in enacting the regulation is unrelated to the suppression of expression, then the regulation need only satisfy the less stringent standard of *U.S. v. O'Brien*, 391 U.S. 377 (1968) for evaluating restrictions on symbolic speech. If the ordinance were deemed to be related to the content of the expression, it would constitute a prior restraint and would have to meet a more demanding standard. *Texas v. Johnson*, 491 U.S. 397 (1989).

The Washington State Supreme Court has held that, for purposes of obscenity, Article I, Section 5 of the Washington State Constitution is coextensive with the interpretation given by the federal courts of the First Amendment, not broader. *Ino Ino, Inc., v. Bellevue, supra*.

The following have been found enforceable as reasonable time, place and manner restrictions on nude or semi-nude dancing, and not to constitute prior restraints and are being proposed for adoption:

1. A 10 foot distance restriction between nude or semi-nude dancing and the nearest patron, and restricting the dancing to a stage raised 18 inches above the floor. *Kev Inc., v. Kitsap County*, 793 F.2d 1053 (1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (1998); *DCR Inc., v. Pierce County*, 92 Wn.App. 660 (1998);
2. A prohibition against direct tipping of entertainers by patrons. *Kev Inc., v. Kitsap County, supra*;
3. A prohibition against direct contact between entertainers and patrons. *DCR Inc., v. Pierce County, supra*; *Colacurcio v. City of Kent, supra*; *Kev Inc., v. Kitsap County, supra*;
4. An open booth design with doors cut at least 42 inches from the floor and the required presence of a manager to monitor activity. *Spokane Arcade v. Spokane*, 75 F.3d 663 (1996); *World Wide Video v. Tukwila*, 117 Wn.2d 382 (1991);
5. A requirement of sufficient lighting to permit effective monitoring. *Ino Ino, Inc., v. Bellevue, supra*; see also *Tollis v. County of San Diego*, No. 05-56300 (9th Cir.);
6. A 2:00 a.m. to 10:00 a.m. business closure. *Ino Ino, Inc., v. Bellevue, supra*;
7. A five-day delay in issuing an operator's license. *Kev Inc., v. Kitsap, supra*;
8. A 30-day delay in issuing a license for operators of peep show booths. *World Wide Video v. Tukwila, supra*;
9. Requiring licensing of every interested party, i.e., every party with a significant interest in the business. *World Wide Video v. Tukwila*.

Although a ban on nude dancing and a requirement that dancers wear pasties and a G-string has been upheld by the U.S. Supreme Court in two separate cases, *Barnes v. Glenn Theatre*, 501 U.S. 560 (1991) and *Erie v. PAP's AM, supra*, the Washington State Supreme Court case law on this issue is not entirely clear. In *O'Day v. King County*, 109 Wn.2d 796 (1988), the court held that Article I, Section 5 protects nude expression, including nude dancing. At that time, the U.S. Supreme Court had not yet ruled on the issue. Thereafter, in *Barnes v. Glenn Theatre* and *Erie v. PAP's, supra*, the U.S. Supreme Court held that the First Amendment did not protect nude dancing. Although the Washington State Supreme Court has held that, for purposes of obscenity, Article I, Section 5 provides no greater protection than its federal counterpart, the most recent decision of Washington's highest court directly on point does hold that nude dancing is a protected form of expression. Legal counsel for Washington Cities Insurance Authority (WCIA) and other attorneys with direct experience defending regulations on adult entertainment have expressed reservations about the ability of a ban on nude dancing to withstand attack against constitutional scrutiny as a prior restraint. Consequently, the proposed ordinance does not purport to ban nude dancing entirely.

**City of Oak Harbor
City Council Agenda Bill**

Agenda Bill No. 9
Date: March 23, 2010
Subject: Interim Adult Entertainment
Facilities Overlay Zone Ordinance --
Emergency Ordinance

FROM: Steve Powers, Development Services Director *rsp*

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

JS Jim Slowik, Mayor
PS Paul Schmidt, City Administrator
DM Doug Merriman, Finance Director
MH Margery Hite, City Attorney, as to form

SUMMARY STATEMENT: This ordinance is an interim measure to be adopted on an emergency basis to address the appropriate location for a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution. However, there are well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods and property values. Local governments are authorized to impose zoning regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for the use after the imposition of the regulations.

The proposed interim ordinance makes the following changes to the OHMC:

1. It adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around incompatible uses.
2. The overlay draws a 750 ft. buffer around religious institutions, parks and schools.
3. It also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
4. It amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities.

The buffers are intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses such as schools, churches and parks and on residential neighborhoods and property values, while still retaining sufficient parcels for adult entertainment uses to be located within the City.

Emergency ordinance: The proposal is that the City Council adopt this interim ordinance on an emergency basis to address adult entertainment uses that may seek to locate within the city limits in the near future. The City staff has received several inquiries about City regulations on the subject in recent months and notes that the absence of regulations creates an imminent risk that an inappropriate location could be chosen for an adult entertainment facility. Since there are no regulations specifically addressing this use in the Oak Harbor Municipal Code (OHMC), it is necessary to ensure that potential applicants are directed to the overlay zone rather than locating next to a church, school, park or residential zone.

Adopting the interim ordinance on an emergency basis allows the City to take additional time to study and hone its zoning regulations, to create a public participation process and to permit the establishment of adult entertainment facilities, at the same time as restricting patently inappropriate locations in the immediate future.

There are several requirements of the emergency ordinance:

1. It must be passed by a majority plus one of the whole membership of the council.
2. The council must make a finding that the ordinance is necessary for the protection of public health, public safety, public property or the public peace.
3. There must be a public hearing on the ordinance within 60 days of adoption. Staff recommends the hearing be set for May 4, 2010.

The interim ordinance may remain in effect for six months, subject to an extension of up to a year, so that the Planning Commission may make its recommendation, public participation may be encouraged and so that any further studies deemed necessary be undertaken. During the period of the interim ordinance, the City will also undertake its obligations to perform a SEPA review and to provide 60 days' prior notification of the new zoning provision to the Department of Commerce.

Policy considerations: If the City Council determines to regulate this use, it must do so in light of well-settled U.S. Supreme Court decisions on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied the use and determined that there are negative impacts upon schools, churches, parks, neighborhoods and

property values, in addition to associated criminal activity, as a result of the activities and location of adult entertainment uses.

The proposed ordinance lays out a zoning framework for addressing the negative secondary impacts of adult entertainment uses. It is intended to address those uses seeking to locate in the City until a final ordinance can be adopted. It is recommended that the City Council adopt this as an interim measure and direct that further study, public participation and Planning Commission recommendation go forward to be included in the ultimate decision on a final ordinance.

Budget considerations: This interim ordinance is not anticipated to have any budget impacts.

STANDING COMMITTEE REVIEW: Regulation of adult entertainment was discussed at the Public Safety Standing Committee on February 18th and at the Government Services Standing Committee on March 9th.

RECOMMENDED ACTION:

1. Consider the record.
2. Allow public comment.
3. Adopt the Interim Adult Entertainment Facilities Overlay Zone Ordinance.

ATTACHMENTS:

•Proposed interim ordinance establishing zoning locations for adult entertainment facilities which include the following:

1. Findings that an emergency exists requiring the immediate effectiveness of the interim ordinance for the protection of public health, safety and peace;
2. Findings of Fact substantiating the need to establish the zones in which adult entertainment facilities may locate;
3. A new chapter of the zoning code entitled "Adult Entertainment Facilities Overlay Zone";
4. Amendment of OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities;
5. A public hearing date on the interim ordinance for May 4, 2010.

•Legal Memorandum for the Record – Zoning

MAYOR'S COMMENTS:

Adult Entertainment Facilities
Overlay Zone Agenda Bill - Final
March 23, 2010 Meeting
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AN INTERIM ORDINANCE OF THE CITY OF OAK HARBOR ADOPTING A NEW CHAPTER 19.52 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE", ENTERING FINDINGS OF FACT CONCERNING THE NEGATIVE SECONDARY EFFECTS OF ADULT ENTERTAINMENT FACILITIES, FINDING AN EMERGENCY WITH RESPECT TO PUBLIC HEALTH, SAFETY AND WELFARE REQUIRING IMMEDIATE ADOPTION OF AN INTERIM ORDINANCE TO ADDRESS PERMISSIBLE LOCATIONS FOR ADULT ENTERTAINMENT FACILITIES, AND AMENDING OHMC 18.20.250 ENTITLED "REVIEW PROCESS III" TO INCLUDE APPLICATIONS FOR EXTENSIONS OF TIME FOR NON-CONFORMING ADULT ENTERTAINMENT FACILITIES

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Findings of Fact and Finding of Emergency. Based on the record submitted in this case, the public comments, and the experience of the city officials of the city of Oak Harbor, the city council hereby enters the following findings of fact:

1. The city of Oak Harbor takes notice and specifically relies upon the experiences and studies utilized by other cities and counties in combating the specific adverse impacts of adult entertainment and sexually oriented businesses, including nude and semi-nude dancing. This includes, but is not limited to, the studies relied upon and findings of fact entered by the city councils of the cities of Bellevue, Tukwila, SeaTac, Federal Way, Burien, Everett and Shoreline.
2. The above-referenced studies and findings of fact establish that there are significant and documented negative secondary effects associated with adult entertainment establishments, including increased crime, negative impacts on neighborhoods and decreases in property values. The crimes associated with adult entertainment establishments include prostitution, drug use and sales, and assaults.
3. These negative associated effects of adult entertainment establishments are particularly harmful to schools, religious institutions, parks and residential neighborhoods.
4. It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, but rather to establish locations within the city where adult entertainment facilities may locate in such a way as to buffer sensitive uses from the secondary effects of adult entertainment establishments.
5. The Oak Harbor Municipal Code does not presently address the appropriate zone for an adult entertainment business. The closest existing zone is the C-3 Community Commercial zone in which "amusement enterprises" and "places of entertainment" are

permitted uses. Principal uses permitted in the C-3 district are also allowed in the Industrial district.

6. Recent inquiries about locating adult entertainment uses in the city create a reasonable expectation that such uses may attempt to locate in the city and would, therefore, locate in the C-3 Community Commercial zone.
7. However, without further refinement, there are parcel locations in the C-3 Community Commercial zone which would abut or fall within a seven hundred and fifty (750) feet radius of religious institutions, schools, and parks or within one hundred (100) feet of residentially zoned neighborhoods. The city council finds that locating an adult entertainment facility in such parcel locations would be detrimental to existing churches, schools, parks and residential zones, and that the public safety, welfare and peace dictates that adult entertainment facilities not be located in such proximity with those uses.
8. Therefore, the city council finds that an emergency exists requiring immediate council action to establish an adult entertainment facilities overlay zone which both establishes permissible locations for adult entertainment facilities and also buffers sensitive uses from the secondary impacts of adult entertainment facilities. This emergency adoption is necessary for the protection of public welfare, safety and peace.
9. The adult entertainment facilities overlay zone established in the interim ordinance will permit adult entertainment facilities uses to locate in a portion of a general commercial zone (C-3 Community Commercial), the Industrial zone and the Planned Industrial Park zone.
10. The interim adult entertainment facilities overlay zone contains eleven (11) parcels of property – eight (8) in the C-3 Community Commercial zone, one (1) in the Industrial zone, and two (2) in the Planned Industrial Park zone. All of the parcels have City water and sewer available to them. The total acreage available in all eleven parcels is 27.92–9.06 acres in C-3 Community Commercial, 9.08 in Industrial, and 9.78 acres in Planned Industrial Park.
11. At the time of the adoption of the interim ordinance, the city council is aware of no adult entertainment facilities meeting the definition of adult entertainment facility which are located in the City of Oak Harbor and there are no applications for permits for such facilities pending. In light of all these circumstances, the city council finds that there are sufficient parcels in the adult entertainment facilities overlay zone to accommodate demand for properly zoned real estate for those uses in the next year.
12. The city council further finds that an interim ordinance is necessary to establish immediate zoning regulations for adult entertainment facilities uses while the city council studies and evaluates the issues involved in locating adult entertainment facilities in greater detail.

13. The city council further intends that the study and evaluation period will include opportunities for public participation and comment, planning commission recommendation, SEPA review and review by the Washington State Department of Commerce.

Section Two: There is hereby added a new Chapter 19.52 entitled "Adult Entertainment Facilities Overlay Zone" to Title 19 of the Oak Harbor Municipal Code to read as follows:

Chapter 19.52
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE

Sections:

- 19.52.010 Purpose.
19.52.020 Application of chapter provisions.
19.52.030 Definitions.
19.52.040 Adult entertainment facilities overlay zone established.
19.52.045 Overlay zone map adopted.
19.52.050 Adult entertainment overlay zone use restrictions.
19.52.060 Non-conforming uses.

19.52.010 Purpose. The purpose of this chapter is to establish an overlay district within which adult entertainment facilities may be located in such a way as to mitigate the adverse secondary effects associated with such facilities. Because of the adverse secondary effects of adult entertainment facilities, restrictions on location are necessary: to protect residents, especially sensitive uses such as schools, religious institutions, parks and residential neighborhoods, from crimes, nuisances and disturbances of the public welfare, peace and safety; to preserve property values; and to respect the place of neighborhoods, schools, religious institutions and parks in the city of Oak Harbor. It is not the intention of this ordinance to suppress any constitutionally protected speech or expression, but to provide sufficient alternative avenues of communication for adult entertainment uses at the same time as providing appropriate zoning and separation between adult entertainment facilities and potentially conflicting uses.

19.52.020 Application of chapter provisions. Adult entertainment facilities, as defined in OHMC 19.52.030(2), shall only be permitted within the Adult Entertainment Facilities Overlay Zone established herein. This chapter applies to all adult entertainment facilities located within the city of Oak Harbor.

19.52.030 Definitions. The following definitions shall apply to this chapter.

- (1) "Adult entertainment" shall have the meaning set out in OHMC 5.20.020.
- (2) "Adult entertainment facility" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises activity.

- (3) "Overlay zone" shall mean that portion of the C-3 Community Commercial zone, the Industrial zone and the Planned Industrial Park zone in which adult entertainment establishments may be located.
- (4) "Potentially conflicting uses" shall mean schools, religious institutions, residential zones and parks established within the city of Oak Harbor as of the date of this ordinance. The term "potentially conflicting uses" shall also mean any such other uses which the city council shall determine require separation from adult entertainment facilities, provided that the addition of any such uses shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

19.52.040 Adult entertainment facilities overlay zone established. There is established an adult entertainment facilities overlay zone in the city of Oak Harbor. The adult entertainment facilities overlay zone shall overlay the C-3 Community Commercial zone, the Industrial zone and the Planned Industrial Park zone. It does not include certain portions of the C-3 zone, the Industrial zone and the Planned Industrial Park zone in which potentially conflicting uses were located at the time of adoption of this ordinance. The following exclusions from the C-3 zone, the Industrial zone and the Planned Industrial Park zones apply:

- (1) The adult entertainment facilities overlay zone removes a buffer of seven hundred fifty (750) feet around the existing potentially conflicting uses of schools, religious institutions, and parks.
- (2) A further buffer removes one hundred (100) feet around existing areas zoned exclusively for residential uses – R-1, Single-Family Residential; R-2, Limited Multiple-Family Residential; R-3, Multiple-Family Residential; and R-4, Multiple-Family Residential.

19.52.045 Overlay zone map adopted. The adult entertainment facilities overlay zone map as attached hereto in Exhibit A is adopted as a pictorial description of the sole geographic areas within the city of Oak Harbor in which adult entertainment facilities are permitted. A copy of the adult entertainment facilities overlay zone map is on file with the city clerk and shall be available for public inspection and copying.

19.52.050 Adult entertainment overlay zone use restrictions. To mitigate the adverse secondary effects associated with adult entertainment facilities, the following parking and lighting restrictions shall apply within the adult entertainment facilities overlay zone:

- (1) Parking requirements. For adult entertainment facilities constructed after the effective date of this ordinance all parking must be visible from the public right-of-way. For adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance, all parking should be visible from the public right-of-way. In cases of adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance where this is not feasible, access to the parking shall be in as direct a route as possible from the public right-of-way and the parking area shall remain free and clear of visual obstructions at all times. Access to the exterior rear of the building shall be denied

to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device approved by the city building official. On-site parking shall be required and regulated in accordance with Chapter 19.44 OHMC. Parking shall be provided at a ratio of one (1) space for every three (3) seats, plus one (1) space for every two (2) employees on the largest shift.

- (2) Lighting requirements. All on-site parking areas and premises entries of adult entertainment facilities shall be illuminated from dusk until one (1) hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. In addition, all on-site lighting, including signs, shall comply with the shading and directional requirements of OHMC 19.28.010(4). An on-premises exterior lighting plan shall be presented to the city building official for approval prior to the operation of any adult entertainment.

19.52.060 Non-conforming uses. For purposes of this title, a “non-conforming adult entertainment facility” constitutes an adult entertainment facility which lawfully exists as an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult entertainment facility prior to a change in the zoning which change does not permit an adult entertainment facility in its existing location and is maintained as an adult entertainment facility although it does not comply with the adult entertainment facility zoning requirements set forth in this chapter, or is an adult entertainment facility which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment facility zoning requirements set forth in this chapter.

- (1) The location of a newly-established public park, permanent religious institution, or school within seven hundred fifty (750) feet or the establishment of a residential district within one hundred (100) feet of an existing adult entertainment facility shall not cause the existing adult entertainment business to be deemed a non-conforming use unless the city council makes a determination that the newly-established park, religious institution or school requires separation from adult entertainment facilities, and further provided that the exclusion of any such areas from adult entertainment facility zoning overlay shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.
- (2) Adult entertainment facilities which are non-conforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a non-conforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a non-conforming adult entertainment facility, or upon the sale of the non-conforming adult entertainment facility, whichever occurs first. Adult entertainment facilities which are non-conforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such non-conforming adult entertainment facility shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

- (a) Extension of a non-conforming adult entertainment facility to any building or other structure or land area other than one occupied by such use as of the date of becoming a non-conforming adult entertainment facility.
 - (b) Extension of any specific type of non-conforming adult entertainment facility, as separately defined in OHMC 19.52.030(2), within a building or other structure to any portion of the floor area that was not occupied by that same type of adult entertainment facility as of the date of becoming a non-conforming adult entertainment facility.
 - (c) Operation of a non-conforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a non-conforming adult entertainment facility.
- (3) Any change in a non-conforming adult entertainment facility shall be to a use which is legally permitted within the zone in which it is located. In the event a non-conforming adult entertainment facility, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult entertainment facility cannot thereafter be used or reused for any type of adult entertainment facility. In the event a non-conforming adult entertainment facility building or structure is vacated, closed or abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located. A vacated, closed or abandoned non-conforming adult entertainment facility building or structure shall also be subject to the discontinuation provisions of OHMC 19.52.060(2).
- (4) Repairs and alterations to a non-conforming adult entertainment facility building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.
- (5) A building or structure containing a non-conforming adult entertainment facility which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed fifty percent (50%) of the real valuation of the building or structure exclusive of foundations at the time of such damage provided that such restoration shall not extend the one (1) year discontinuation period established in OHMC 19.52.060(2). Restoration of a structure or building housing a non-conforming adult entertainment facility or moneys used therefore shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection (6) of this section.
- (6) In the event the owner of a non-conforming adult entertainment facility determines that the period set forth in subsection (2) of this section does not provide the adult entertainment facility with a reasonable period of amortization, then no later than one

Adult Entertainment Facilities

Overlay Zone Ordinance - 6

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164

hundred eighty (180) days prior to the expiration of the period, the owner of a non-conforming adult entertainment facility shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of Seven Hundred Twelve Dollars (\$712.00) and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the hearing examiner shall determine whether or not the harm or hardship to the non-conforming adult entertainment facility outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the hearing examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the hearing examiner shall be in accordance with the review process as described in Chapter 18.40 OHMC for a Review Process III.

- (7) Within thirty (30) calendar days of becoming a non-conforming adult entertainment facility, the non-conforming adult entertainment facility shall provide the city's development services director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the city's development services director shall be provided other documents which show record of ownership.

Section Three. OHMC 18.20.250 entitled "Review Process III", last amended by Ordinance 1376 §13 in 2004 is hereby amended to read as follows:

18.20.250 Review process III.

- (1) Review process III applies to all permit applications that require an open public hearing before the hearing examiner.
- (2) Review process III actions include the following decisions:
 - (a) Variances;
 - (b) Conditional uses;
 - (c) Wetland permits and variances designated to be decided at a predecision public hearing; and
 - (d) Applications for extensions of time for non-conforming adult entertainment facilities pursuant to OHMC 19.52.060(6).

Section Four: Public Hearing. In accordance with RCW 36.70A.390, a public hearing shall be held on this interim zoning ordinance on May 4, 2010 or such other date within sixty (60) days of the date of adoption of this interim ordinance as shall be publicly noticed.

Adult Entertainment Facilities
Overlay Zone Ordinance - 7
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165

Section Five. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Six. Effective Date. The City Council having found that adoption of this Ordinance as an emergency is necessary for the protection of the public welfare, public safety and the public peace, this Interim Ordinance shall be in full force and effect immediately.

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PASSED by a majority plus one of the entire membership of the City Council this 23rd day of March, 2010.

APPROVED by its Mayor this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

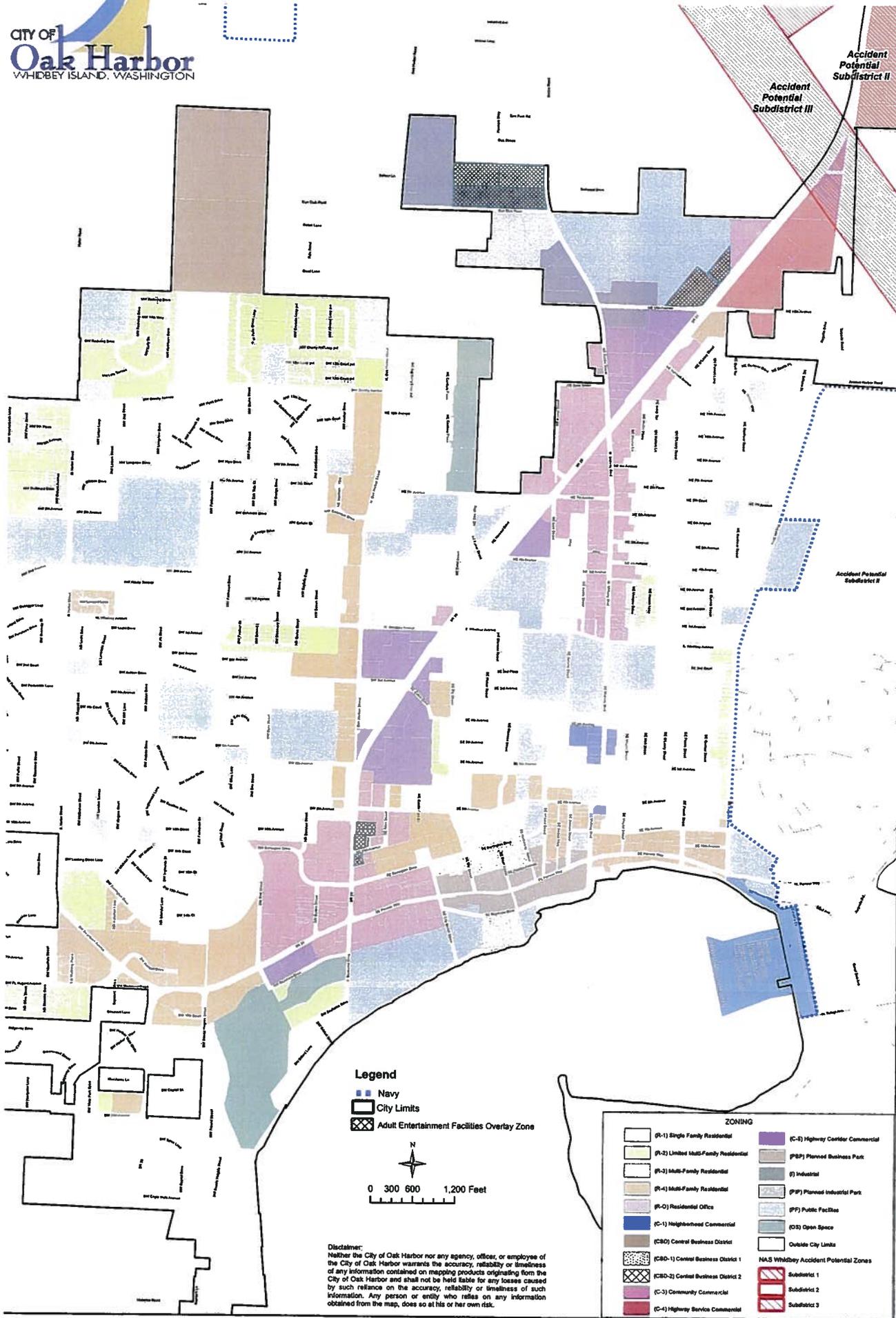
Approved as to Form:

City Attorney

Published: _____

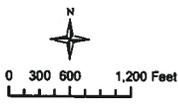
166

EXHIBIT A Adult Entertainment Facilities Overlay Zone



Legend

- Navy
- City Limits
- Adult Entertainment Facilities Overlay Zone



Disclaimer:
Neither the City of Oak Harbor nor any agency, officer, or employee of the City of Oak Harbor warrants the accuracy, reliability or timeliness of any information contained on mapping products originating from the City of Oak Harbor and shall not be held liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information. Any person or entity who relies on any information obtained from the map, does so at his or her own risk.

ZONING	
 (R-1) Single Family Residential	 (C-4) Highway Corridor Commercial
 (R-2) Limited Multi-Family Residential	 (PBP) Planned Business Park
 (R-3) Multi-Family Residential	 (I) Industrial
 (R-4) Multi-Family Residential	 (PIP) Planned Industrial Park
 (R-O) Residential Office	 (PF) Public Facilities
 (C-1) Neighborhood Commercial	 (OS) Open Space
 (CBO) Central Business District	 Outside City Limits
 (CBO-1) Central Business District 1	 N.A.S. Whidbey Accident Potential Zones
 (CBO-2) Central Business District 2	 Subdistrict 1
 (C-3) Community Commercial	 Subdistrict 2
 (C-4) Highway Service Commercial	 Subdistrict 3

167

**INTERIM ORDINANCE
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE**

LEGAL MEMORANDUM FOR THE RECORD

To: Mayor Jim Slowik, Members of the Oak Harbor City Council

Re: Zoning Considerations for Adult Entertainment Businesses

Fm: Margery Hite, City Attorney

Date: March 18, 2010

ISSUE PRESENTED

The purpose of this memorandum is to outline the legal parameters that have been established with respect to land use regulation and zoning of adult entertainment businesses, and to discuss the proposed interim adult entertainment facilities overlay zone in light of these legal requirements.

I. Fundamental Principles

Nude dance is a form of “speech” protected under the First Amendment to the U.S. Constitution although it falls only within the “outer ambit of the First Amendment’s protection.”¹ As protected “speech”, the content of the nude expression is protected but the time, place and manner of the speech are proper matters for government regulation.² The 1986 case *City of Renton v. Playtime Theatres, Inc.*³, challenged a city’s zoning ordinance prohibiting the location of adult motion picture theaters within 1,000 feet of uses such as churches, schools and parks as a violation of the First and Fourteenth Amendments to the U.S. Constitution. In upholding the right of a city to establish such zoning regulations, the U.S. Supreme Court found that the zoning regulations were a time, place and manner regulation focused on the secondary effects of the adult theaters rather than upon the content of the “speech” or expression taking place in the adult theaters. As long as the city’s zoning regulations were designed to serve a “substantial governmental interest” and allowed for “reasonable alternative avenues of communication”, they were found not to violate the First or Fourteenth Amendments.

¹ *City of Erie v. Pap’s A.M. tdba “Kandyland”*, 529 U.S. 277, 289, 120 S.Ct. 1382, 1391, 146 L.Ed.2d 265 (2000).

² *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 566, 111 S.Ct. 2456, 2460, 115 L.Ed.2d 504 (1991).

³ 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986).

The Court found that the city council could rely upon studies conducted by other jurisdictions to determine that there is a substantial governmental interest in regulating the zoning of adult theaters.⁴ In Renton's case, these studies showed deleterious effects upon crime, property values and the quality of neighborhoods and urban life generally. The Court found that Renton's regulations were "narrowly tailored" to affect only those businesses with the unwanted secondary effects, which was necessary to sustain the regulations.⁵

In determining that the city's zoning ordinance was constitutional, the Court also found that it allowed for "reasonable alternative avenues of communication". The zoning ordinance left approximately 520 acres or more than five percent of the entire land area of Renton open to use as adult theater sites.⁶

II. Mitigating Secondary Effects of Adult Entertainment

As part of adopting zoning regulations specific to adult entertainment businesses, then, the city council will need to find a substantial governmental interest in mitigating the secondary effects of adult entertainment businesses and that the zoning regulations are narrowly tailored to address those secondary effects.⁷

The secondary effects of the entertainment activity have been established by other cities and counties who have examined the issue.⁸ In a city such as Oak Harbor that has not had experience of adult entertainment uses, the experience of other cities and counties may be used by the city council to determine that there is a substantial governmental interest at stake.⁹ Other cities in western Washington, including Everett, Shoreline, Kent, Des Moines, Federal Way, Bellevue, Burien, Lynnwood and Tukwila, have had experience with adult entertainment businesses. These are referenced in the record submitted, and the court decisions involving regulation by these cities that are also part of the record. Spokane's experience with adult businesses generally is also included in the record.

Everett's experience with adult entertainment businesses is described in the record submitted with the proposed ordinance – employees and customers of live adult entertainment businesses are frequently involved in acts of prostitution which are initiated on premises and performed at nearby locations; such prostitution and solicitation affect nearby residences, businesses, traffic

⁴ "We hold that Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the "detailed findings" summarized in the Washington Supreme Court's *Northend Cinema* opinion, in enacting its adult theater zoning ordinance." *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 at 51, 106 S.Ct. 925 at 931, 89 L.Ed.2d 29 (1986).

⁵ *City of Renton v. Playtime Theatres, Inc.*, 106 S.Ct. at 931.

⁶ At the time, the city of Renton had a population of approximately 32,000. 106 S.Ct at 928.

⁷ This finding is intended to meet the four-part *O'Brien* test.

⁸ *World Wide Video of Washington v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004) – This case dealt with adult book and video stores rather than adult entertainment in the form of dance, etc. In either case, however, the object of the regulations should not be the suppression of expression but mitigation of secondary effects.

⁹ However, those studies must address the uses being regulated in Oak Harbor's ordinance – adult entertainment establishments. *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 816 P.2d 18 (1991) Tukwila zoning ordinance regulating "take-home" merchandise stores exceeded evidence of secondary effects in adult entertainment studies and was not, therefore "narrowly tailored" and constitutional.

and the quality of life in adjacent neighborhoods.¹⁰ Other criminal activity associated with adult entertainment businesses are public lewd conduct, use and sale of controlled substances and assault.

Spokane's experience with adult businesses generally is described in the affidavits submitted in support of the City's motion for summary judgment in *World Wide Video of Washington v. City of Spokane*, Eastern District of Washington, No. CS-02-0074-AAM. They show that adult businesses have been associated with the secondary effects of public masturbation, sex acts and condoms in public places, solicitation, prostitution and public urination.

The record submitted also shows that sexually oriented businesses or adult businesses generally are associated with property value decline¹¹ and increases in crime rates.¹²

The city council may use this information, in conjunction with the rest of the record, public comment, and council member experience, to establish that there is a "substantial governmental interest" in regulating the location of adult entertainment businesses to mitigate the associated secondary effects. It must tie the regulations to the secondary effects such that the regulations are directed towards mitigating those effects.

In the proposed zoning overlay ordinance, the secondary effects of sex-crimes, public lewdness, drug use and assaults are addressed by creating buffer zones around the uses that are most likely to be negatively affected by contact with the secondary effects. Children are protected from viewing sex and sex-related conduct, as well as drug crimes, solicitation and violent behavior, by placing 750 foot buffers around schools, and parks. Religious institutions are buffered from those effects as well, since congregations (which include children) are highly sensitive to the incompatibility of the associated secondary effects of adult entertainment. Neighborhoods similarly have a buffer of 100 feet to preserve the quality of life.

III. Establishing Reasonable Alternative Zoning Locations for Adult Entertainment

While larger buffers may be preferred by residents, it is important to still leave "alternative avenues of communication" in the form of sufficient locations zoned for adult entertainment uses. Larger buffers reduce the number of available parcels. The size of buffers proposed here intends to achieve a balance between protecting incompatible uses from the secondary effects of adult entertainment and providing locations that are zoned for adult entertainment uses.

There is no requirement that a city provide a commercially viable location for a specific adult entertainment applicant. "That respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation."¹³ Further, it is not relevant whether a site will result in "lost profits, higher overhead costs, or even prove to be commercially infeasible for an adult business."¹⁴

¹⁰ Everett record at pp. 26-28.

¹¹ Indianapolis record, 1984.

¹² Minneapolis record, 1989, Garden Grove California record, 1991, Phoenix record – increase in sex crime rate

¹³ *City of Renton v. Playtime Theaters*, 106 S.Ct. at 932.

¹⁴ *Topanga Press v. City of Los Angeles*, 989 F.2d 1524, 1530 (9th Cir. 1993).

However, an adult business must have a reasonable opportunity to locate or relocate in the jurisdiction.¹⁵ Under cases decided by the 9th Circuit Court of Appeals¹⁶, this means that there must be an adequate number of potential relocation sites in the real estate market. To determine whether a site is part of the real estate market, five considerations are set out. First, there must be a genuine possibility that the site could become available. Second, the site must be reasonably accessible to the general public. Third, areas in manufacturing zones may be included with proper infrastructure, such as sidewalks, roads and lighting. Fourth, if the site is not commercially zoned, then it must be a reasonable site for some commercial enterprise, rather than a swamp, a sewage treatment plant, or the like. Fifth, sites zoned for commercial uses are presumed to be part of the real estate market for such uses.¹⁷

The majority of sites in the proposed adult entertainment facilities overlay zone are in the C-3 Community Commercial zone. One site is in the Industrial zone, which permits uses designated for the C-3 zone as well as industrial uses. In total, there are eight (8) parcels in the C-3 Community Commercial zone, one (1) in the Industrial zone, and two (2) in the Planned Industrial Park zone. All of the parcels have City water and sewer available to them. The total acreage available in all eleven parcels is 27.92 acres - 9.06 acres in C-3 Community Commercial, 9.08 acres in Industrial, and 9.78 acres in Planned Industrial Park.

After determining that the parcels to be considered are part of the appropriate real estate market, the next question is whether the remaining acreage or sites provide the adult entertainment businesses with a reasonable opportunity to locate in the city. The adequacy of zoned parcels should be assessed in terms of the evidence of total demand for such sites and other factors such as the percentage of available acreage theoretically available to adult businesses, the number of sites potentially available in relation to the population, "community needs, the incidence of [adult businesses] in other comparable communities, [and] the goals of the city plan."¹⁸

Because there are no actual adult entertainment businesses located in Oak Harbor, the demand is unknown. However, it is reasonable to assume that the adult entertainment facilities overlay district established in the interim ordinance need only address the demand over the interim period of the ordinance.¹⁹

It is important to remember that there is no absolute number of parcels that must be provided to meet the "reasonable alternative avenues of communication." In Simi Valley, a city 35 miles northwest of Los Angeles, with a population of approximately 100,000, the city could identify 4 potential sites for its first adult business application. Like Oak Harbor, Simi Valley had never had an adult entertainment business before and therefore the demand for sites for such businesses was unknown (beyond the first applicant). The 9th Circuit refused to rule as a matter of law that 4 sites were insufficient, holding instead that it was a fact-specific inquiry whether an adult

¹⁵ *Ibid.*

¹⁶ Washington state and thus Oak Harbor lies within the jurisdiction of the Federal 9th Circuit Court of Appeals.

¹⁷ *Topanga Press v. City of Los Angeles*, 989 F.2d 1524, 1531 (9th Cir. 1993).

¹⁸ *Isbell v. City of San Diego*, 258 F.3d 1108, 1114 (9th Cir. 2001) citing *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. - 1999).

¹⁹ See *Diamond v. Taft*, 215 F.3d 1052 (9th Cir. 2000), finding that adequate opportunities existed for the one current applicant.

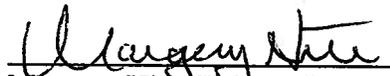
business has a "reasonable opportunity to open and operate".²⁰ Considerations the court listed were: percentage of available acreage theoretically available to adult businesses, the number of sites potentially available in relation to the population, community needs, the incident of adult businesses in other comparable communities, and the goals of the city plan.

The proposed interim ordinance allows the city to create an interim location for adult entertainment businesses so that they do not abut or locate in proximity to schools, religious institutions, parks or residentially-zoned neighborhoods. The study period that this interim ordinance will afford the city should be used, among other things, to undertake the analysis required to meet constitutional requirements.

IV. Conclusion

The proposed buffers around schools, religious institutions, parks and residentially-zoned neighborhoods are intended to provide mitigation of the secondary effects of adult entertainment establishments. Further study is needed to create a final zoning regulation and the adoption of an interim ordinance allows the city time to undertake this complex process while still protecting the most sensitive uses from adult entertainment business impacts in the interim.

Dated this 1st day of March, 2010.



Margery Hite, WSBA #8450
City Attorney

²⁰ *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. – 1999).

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 10
Date: March 23, 2010
Subject: Wastewater Facility Plan
Engineering Services Selection

**FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill summarizes the engineering consultant selection process for the wastewater treatment facility project.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under RCW 35A.11.020.

The process for the selection and contract negotiations is outlined in OHMC 2.350, a copy of which is attached.

SUMMARY STATEMENT

During development of the Sewer Comprehensive Plan in 2006 and 2007, the need for additional wastewater treatment facilities began to emerge. The sewer plan identifies the need for additional capacity as early as 2017 depending on the level of growth that may occur within the City service area. The need for additional facilities is also driven by the condition of the existing plants and anticipated regulatory changes likely to occur in the next 5 years. Specifically, the RBC treatment plant near Windjammer Park has reached the end of its useful and practical life. Constructed in the early 1970's, the RBC plant utilizes an outdated process technology and equipment that is no longer supported by the industry.

The condition of the existing treatment facilities and the capacity of the system are only part of the issues facing the City. The Puget Sound Partnership Action Agenda identifies a number of areas targeted for Puget Sound cleanup efforts. A key target of the cleanup effort is ensuring that dissolved oxygen levels are sufficient to sustain marine life. Dissolved oxygen levels drop as the nutrient loading increases. Municipal wastewater treatment plants are identified as significant contributors to nutrient loading in Puget Sound. The addition of nutrient removal from treated wastewater as a condition of discharge permits issued by the Department of Ecology is likely to

occur in the near future as implementation of the Puget Sound Action plan gains momentum. Neither the RBC nor the SPB lagoon plants are capable of nutrient removal without significant investment. Finally, the recent conversion of the Crescent Harbor marsh area from freshwater to salt water habitat has resulted in a significant flooding risk to the SPB lagoon plant that threatens the long term viability of a treatment plant at that location.

In summary, the City of Oak Harbor is looking at the following major issues in relation to wastewater treatment plants:

- Capacity
- Age and condition of the RBC plant
- Pending changes to discharge permits associated with Puget Sound Cleanup
- Flooding risks and habitat concerns at the Seaplane Base Lagoons

The 2010 Wastewater division budget included \$500,000 to begin the process that will eventually lead to the construction of a new wastewater treatment plant. The first step in the process is the development of a facility plan. The requirements for wastewater treatment facility planning are contained in WAC 173-240. In its most basic purpose however, a facility plan defines what treatment process will be utilized and where the facility will be located. In addition, to the "What and Where," the facility plan will examine the long term life cycle costs, financial impacts to rate payers, effluent disposal, solids handling, and public participation. The first step for the City of Oak Harbor in developing the facility plan is the selection of a qualified engineer to assist and take the lead in developing the project.

The selection process for engineering consultants is defined in OHMC 2.35 and RCW 39.80. A copy of OHMC 2.350 as well as summary information published by the Municipal Research Service Center (MRSC) in the "Bidding Book" regarding the selection process required by RCW 39.80 is attached.

In following this prescribed process for selecting the most qualified firm, City staff issued a request for qualifications for the project in September of 2009. From the list of eight firms who submitted, four firms were short listed for further consideration. The short list was based on a staff review and ranking of the submitted statements of qualifications. The four short listed firms were sent a request for formal proposals (RFP). A copy of the RFP document is attached. Each of the four firms short listed were invited to a formal interview in February 2010. Council members Paggao, Almberg and Munns together with Mayor Slowik and City staff formed the interview panel. Based on the written proposal and the interviews, Carollo Engineers was selected as the most qualified engineering firm to assist the City with the development of the wastewater facility plan.

It is worth noting at this point that the RFP document included goals for wastewater effluent quality that are significantly higher than the current permit requirements. The intent was to develop a project that placed a priority on protecting the environment and planning for anticipated permitting requirements. Quoting from the request for proposals:

"Recognizing that the City of Oak Harbor is connected to the pristine waters of Puget Sound, specifically Oak Harbor Bay and Crescent Harbor Bay, the City's goal is to

obtain the highest level of water quality practical while recognizing the limitations of the rate payers of the city to fund improvements. A primary goal of the City is the continued protection of the water quality of the waters in and around Oak Harbor to meet the goals outlined in Puget Sound Action Plan developed by Puget Sound Partnership for the cleanup and protection of Puget Sound. "

The next step in the process is the development of the scope of work. In addition to the prescribed requirements of the WAC, it is anticipated that the scope of work will include an extensive public process. Input of the citizens of Oak Harbor is critical to the development and acceptance of the facility plan. Input and participation of other stakeholders, including NASWI, Island County, state and federal regulatory agencies (DOE, DOH, Army Corps of Engineers, DFW, NOAA, NMFS, DNR, etc.) is also critical in the development of the facility plan. The environmental review process, the public involvement process, the financial analysis and the engineering design and planning will all factor into the decision making process and development of the facility plan. The scope of work will encompass all of the statutorily required elements with particular attention placed on public involvement. The basic elements of the scope of work are shown in the attached work flow diagram that was included in Carollo's written proposal, a copy of which is available in its entirety from the City of Oak Harbor website.

Once the scope of work is developed and agreed to by both parties, the consulting engineer will submit the fee schedule to complete the work. The City and consultant will then continue to negotiate until a mutually acceptable contract is approved by the City Council as required by OHMC 2.350.

Staff have notified Carollo Engineers of their selection as the most qualified firm and staff are requesting Council authorization to proceed with contract negotiations with Carollo for the wastewater facility plan project. It is anticipated that a contract will be presented to the Council for consideration in late April or early May.

STANDING COMMITTEE REPORT

The Public Works standing committee was briefed on the project numerous times and was involved in the consultant interviews. An overview of the selection process was presented to the General Government committee on February 10, 2010.

RECOMMENDED ACTION

Authorize City staff to begin contract negotiations with Carollo Engineers for the wastewater treatment facility project.

ATTACHMENTS

OHMC 2.350

Excerpts from MRSC Bidding Book

City of Oak Harbor Request for Proposals

Excerpt from Carollo written proposal

MAYOR'S COMMENTS

Chapter 2.350

**CONTRACTS FOR
ARCHITECTURAL AND
ENGINEERING SERVICES**

Sections:

- 2.350.010 Purpose.
- 2.350.020 Definitions.
- 2.350.030 City's requirement for architect, engineer and surveyor services – Advance publication.
- 2.350.040 Procurement of architectural and engineering services – Submission of statement of qualifications and performance data – Participation by minority and women-owned firms.
- 2.350.050 Procurement of architectural and engineering services – Contract negotiations.
- 2.350.060 Procurement of architectural and engineering services – Exception for emergency work.

2.350.010 Purpose.

The city hereby establishes a policy consistent with the state requirements under Chapter 39.80 RCW, to publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. (Ord. 1470 § 6, 2006).

2.350.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the city, contracting to perform activities within the scope of the general definition of professional practice in Chapter 18.08, 18.43 or 18.96 RCW as now in effect or as hereafter amended.

These provisions of the RCW cover architects, professional engineers, surveyors and landscape architects.

(2) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(3) "Consultant" means any person providing professional services who is not an employee of the city for which the services are provided.

(4) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services. (Ord. 1470 § 6, 2006).

2.350.030 City's requirement for architect, engineer and surveyor services – Advance publication.

The city shall publish in advance the city's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the city who can provide further details. The city may comply with this section by:

(1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the city; or

(2) Announcing generally to the public its projected requirements for any category or type of professional services. (Ord. 1470 § 6, 2006).

2.350.040 Procurement of architectural and engineering services – Submission of statement of qualifications and performance data – Participation by minority and women-owned firms.

In the procurement of architectural and engineering services, the city shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The city shall evaluate current statements of qualifications and performance data on file with the city, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the city, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Minority and women-owned businesses shall be encouraged to apply. (Ord. 1470 § 6, 2006).

2.350.050 Procurement of architectural and engineering services – Contract negotiations.

(1) The city shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the city determines is

2.350.060

fair and reasonable to the city. In making its determination, the city shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the city is unable to negotiate a satisfactory contract with the firm selected at a price the city determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the city shall select other firms in accordance with OHMC 2.350.040 and continue in accordance with this section until an agreement is reached or the process is terminated. (Ord. 1470 § 6, 2006).

2.350.060 Procurement of architectural and engineering services – Exception for emergency work.

(1) This chapter need not be complied with by the city when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the city from complying with applicable laws limiting emergency expenditures. (Ord. 1470 § 6, 2006).

Chapter 2.360

PURCHASE SERVICE POLICIES

Sections:

- 2.360.010 Definitions.
- 2.360.020 Policy and application.
- 2.360.030 Competitive processes.
- 2.360.050 Administrative rules.

2.360.010 Definitions.

“Purchase services” means services provided by a vendor to accomplish routine, contrary and necessary functions such as operation of equipment, shredding, janitorial services, security, yard maintenance, gardening, computer hardware and software maintenance or data entry. It does not include professional services as defined under Chapter 39.80 RCW, or services such as accounting, legal, medical, planning, management or artistic services. (Ord. 1470 § 7, 2006).

2.360.020 Policy and application.

It is the intent of the city to use competitive processes to the extent possible to procure purchase services. (Ord. 1470 § 7, 2006).

2.360.030 Competitive processes.

Where reasonably possible, the city is directed to use competitive bid processes or competitive solicitation processes for purchase services as in the same manner as is used for purchase of supplies and equipment. (Ord. 1470 § 7, 2006).

2.360.050 Administrative rules.

The mayor may promulgate procedures and rules to implement purchase service solicitations. Procedure promulgation shall comply with OHMC 2.310.030. (Ord. 1470 § 7, 2006).

The Bidding Book

for Washington Cities and Towns



REPORT NUMBER 52

September 2006

Municipal Research and Services Center

Bid Laws That Apply to All Cities and Towns

The bid laws that have been previously discussed are unique for the different classes of cities. However, some bid laws are the same for all classes of cities. All cities must secure the services of architects and engineers by a request for qualifications. No cities are allowed to split bids to circumvent the bid limits. In certain situations, cities must call for bids even when work is performed by private developers. Each of these topics is discussed below.

Architectural and Engineering Services

Although there are no requirements that cities bid competitively for services (except for the official newspaper, as noted above on page 15), cities must follow the procedures set out in chapter 39.80 RCW when contracting for architectural and engineering services.⁶⁵

Chapter 39.80 RCW requires that a city publish its need for architectural or engineering services in advance, concisely stating the general scope and nature of the project or work for which services are required.⁶⁶ The notice must also provide the address of a representative of the city who can provide additional details. Compliance with this requirement may be accomplished by either: (1) publishing an announcement each time the service is needed, or (2) announcing generally to the public the city's projected requirements for any category or type of engineering or architectural service.⁶⁷

Cities may advertise for architectural and engineering firms to annually submit a statement of qualifications and performance data. The city then evaluates the qualifications and performance data it has on file along with the information submitted regarding a proposed project. Following the evaluation, the city invites one or more firms to meet with its officials to discuss the project and the relative benefits of various methods of providing the desired services. The city then selects the firm "most highly qualified" to provide the required services from among those firms.⁶⁸ City procedures and guidelines are required to include a plan to ensure that women and minority (WMBE) firms have the maximum opportunity to compete for the contract. The level of WMBE firm participation must be consistent with their availability within the relevant professional

⁶⁵See *Contracting for Professional Services*, MRSC Information Bulletin No. 485 (Municipal Research and Services Center), April 1994, for more information on these procedures.

⁶⁶RCW 39.80.030.

⁶⁷Id.

⁶⁸RCW 39.80.040.

community.⁶⁹ The price or cost of the service may not be considered by the city when determining which firm is the most highly qualified.⁷⁰

After the most qualified firm has been chosen, the city negotiates a contract with that firm for the services at a price that it determines is fair and reasonable, considering the estimated value of the services to be rendered, as well as the scope and complexity of the project.⁷¹ If a satisfactory contract cannot be negotiated, the city formally terminates the negotiations with that firm and attempts to negotiate a contract with the next most qualified firm.⁷² The process continues until an agreement is reached or the search is terminated.

The process outlined above for the procuring architectural or engineering services may be dispensed with upon a finding by the city that an emergency requires the immediate execution of the work involved.⁷³



Does the city have to hire an architectural or engineering firm for the entire year? No. The city can hire one firm for the entire year, but it can also hire on a project-by-project basis, as long as it follows the procedures in chapter 39.80 RCW for each project.

In its request for qualifications, may a city ask engineering firms for their hourly rates? No. The most qualified firm must be chosen. Only then can the city discuss the cost of the services. If, during the negotiations, the city finds the price is too high, it can then go on to negotiate with the next most qualified firm.

Must a city follow the procedures in chapter 39.80 RCW when procuring the services of surveyors and landscape architects? Yes. In RCW 39.80.020(5), "architectural and engineering services" is defined to mean "professional services...within the scope of the general definition of professional practice in chapters 18.08 [architects], 18.43 [engineers and land surveyors], or 18.96 RCW [landscape architects.]" (Material in brackets added.) See also AGO 1988 No. 14.

Is a two-year retainer with an engineer prohibited? It depends. If the city is hiring this person to act as "city engineer" (but not as a city employee) to perform all the engineering work in the city, a two-year contract is probably not allowed. RCW 39.80.40 provides that cities must publish their requirements for professional services and encourage firms to submit qualifications and performance data annually. However, the city need not change engineers every year. The city can continue to hire the same engineer if the city finds that person to be the most qualified.

If the city has a specific project for which it wishes hire an engineer, and if that project will take two years, the city may hire that person for the duration of the project.

⁶⁹See discussion set out at page 11.

⁷⁰See AGO 1988 No. 4.

⁷¹RCW 39.80.050(1).

⁷²RCW 39.80.050(2).

⁷³RCW 39.80.060.

**CITY OF OAK HARBOR
REQUEST FOR PROPOSAL FOR ENGINEERING SERVICES FOR
WASTEWATER TREATMENT PLANT PRELIMINARY ENGINEERING AND
FACILITY PLAN**

INTRODUCTION

The City of Oak Harbor is issuing a request for proposals (RFP) for engineering services to prepare preliminary design and a facility plan for new wastewater treatment system to serve the projected Oak Harbor Urban Growth Area (UGA) in Island County. This is an opportunity to plan a modern wastewater treatment and water reclamation system with either Membrane Bioreactor (MBR) or Conventional Activated Sludge (CAS) treatment meeting criteria established by the City of Oak Harbor.

BACKGROUND

The City of Oak Harbor currently operates two waste water treatment facilities. The City of Oak Harbor RBC plant located in Windjammer Park has a .7 mgd limit with the balance of an approximately 2.0 mgd total flow being diverted to facultative lagoon plant located on the Naval Air Station Whidbey Island. The two current facilities serve a population of about 23,000 of which approximately 4,000 are housed at the Naval Air Station and do not contribute to flow to City treatment Facilities. It is anticipated that future demands will approach the permit limitations of the facilities in approximately 2017 as described in greater detail in the City's comprehensive sewer plan. The City anticipates the need to have a new treatment facility in operation by 2017. It is anticipated that the new plant will be constructed to meet in initial demands at the time of construction (~3mgd) and be expandable to meet the long term demand projections (~6 mgd)

Additional information on the City's wastewater system and treatment plants can be found in the documents at the web links below:

- <http://www.oakharbor.org/uploads/Comprehensive%20Sewer%20Plan.pdf>
- <http://www.oakharbor.org/uploads/City%20of%20Oak%20Harbor%20Sewer%20Map.pdf>
- <http://www.oakharbor.org/uploads/WWTP%20ADHOC%20COM%20Report%20final.pdf>
- <http://www.oakharbor.org/uploads/WWTP%20Facilities%20Evaluation.pdf>

The objective of this request for proposals is to obtain a Technical Memorandum recommending a site for the treatment facilities, a preliminary design of the treatment facility and an **approved** Facility Plan in compliance with WAC 173-240-060 and 40 CFR 35.917-1 including the required Environmental Documents.

PROPOSAL REQUIREMENTS

Excessively elaborate or lengthy proposals are not desired. Proposals should be limited to no more than 50 (fifty) single sided pages. The proposal should be accompanied by a brief introductory letter stating your firm's interest in the project. The cover letter should be limited to no more than two single sided pages. The proposal should contain the following elements.

1. **Project Approach:** Provide a clear concise statement of the general approach to be undertaken on the project.

2. **Scope of Work:** The consultant will be required to provide all services and work to complete the required documents and all work described herein. The consultant should include in the scope of work the gathering and analysis of data, periodic meetings with City staff, a minimum of three Public Meetings and coordination with regulatory and permitting agencies as necessary

The Scope of Work provided with the proposal should include a step by step breakdown of the tasks and subtasks to be performed on a product by product basis. Any tasks or subtasks that you assume to be accomplished by City staff and the general level of participation expected from the City should also be identified and included as tasks or subtasks.

The City assumes that as a minimum, the following Scope of Work is necessary to satisfactorily complete the needed services.

It is anticipated that the scope of work will incorporate at a minimum the following general topics:

- 1) Potential Facility Location
 - a. RBC Plant
 - b. Lagoon site
 - c. Train Wreck Site
 - d. Any additional site recommendation developed by the consultant.
- 2) Treatment processes design (two minimum)
 - a. MBR
 - b. Conventional activated sludge
- 3) Solids handling
 - a. Local beneficial use (i.e. composting, land application, etc)
 - b. Offsite disposal (i.e. Boulder park)
 - c. Regional solids opportunities (North Whidbey Area)
 - d. Other yet to be determined process
- 4) Effluent Disposal
 - a. Water Reuse

- i. Class A injection to groundwater
 - ii. Irrigation supply
 - iii. In plant use
 - b. Wetland Creation
 - c. Saltwater outfall
- 5) 40 year Life cycle cost for options and variations
- 6) Construction and project scheduling and phasing (dependent on location and process) for option and variations
- 7) System wide SCADA monitoring
 - a. Plant
 - b. Collections
 - c. Conveyance
- 8) Project Financing options
 - a. Bonding planning and assistance in bond issue preparation
 - b. Assistance in identifying possible grant and or loan opportunities.

It is assumed that the consultant will incorporate standard elements of a treatment plant into the facility plan documents. These elements include but are not limited to:

- a) Short and long term demand estimates and population based flow projections
- b) Disinfection methods
- c) HVAC design
- d) Fire protection needs
- e) Laboratory design
- f) Outfall design
- g) Staffing plans
- h) Power demands
- i) Maintenance and operations planning
- j) Compliance with DOE regulations and permitting requirements
- k) Context sensitive design
- l) Urban architecture
- m) Sound control
- n) Odor control
- o) Redundancy and emergency response planning

Recognizing that the City of Oak Harbor is connected to the pristine waters of Puget Sound, specifically Oak Harbor Bay and Crescent Harbor Bay, the City's goal is to obtain the highest level of water quality practical while recognizing the limitations of the rate payers of the city to fund improvements. A primary goal of the City is the continued protection of the water quality of the waters in and around Oak Harbor to meet the goals outlined in

Puget Sound Action Plan developed by Puget Sound Partnership for the cleanup and protection of Puget Sound.

The City has tentatively established the following goals for the development of the new plant:

- 1) Silver LEED Certified facility
- 2) Effluent requirements/goals/targets as shown in the chart below and compared with existing permit limitations.

	RBC plant NPDES permit limit	Lagoon plant NPDES permit limit	New Facility Target/Goal
Total suspended solids	30mg/l	75mg/l	10mg/l
	85% removal	85% removal	95% removal
CBOD 5	25 mg/l	25 mg/l	10mg/l
	85% removal	85% removal	95% removal
Turbidity	Not applicable	Not applicable	1 NTU
Chlorine residual	0.114 mg/l	0.5 mg/l	No discharge
Fecal coli form	200/100ml (monthly)	200/100ml (monthly)	<100/100ml (monthly)
Nitrogen	Not applicable	Not applicable	8mg/l
Total Phosphorous	Not applicable	Not applicable	0.5 mg/l
Pathogen barriers	No	No	Yes

Additional Miscellaneous Services are expected to include

- 1) Provide continuing consultation through oral and written communication on all matters relating to the project.
- 2) Provide monthly progress reports to the City and participate in presentations before the City Council and other public bodies. The City anticipates a minimum of three (3) public meetings.
- 3) Monthly billings are to detail hours expended by specific consultant personnel by task and subtask.

3. **Schedule of Work:** The consultant shall provide a schedule for having the initial submission of a Facility Plan to the State Department of Ecology not later than one year after a Notice to Proceed. The schedule should include the time allowed for review by the City and other agencies and should identify a critical path involving any required actions by entities other than the consultant.

4. **Consultant Qualifications:** Consultant qualifications should include detailed information regarding the Consultant's experience on similar projects. A statement to the effect that team members and subconsultants will not be replaced without the prior approval of the City shall be included. The Consultant's qualifications should include the following information:

- 1) List no more than five projects of similar complexity and magnitude undertaken in the past five years and provide references and a phone number for each reference.
- 2) Provide resumes of no more than four key members of the proposed project team and no more than four key members of each subconsultant who will work on this project. Each resume should be a maximum of two pages in length.
- 3) Of the listed reference projects, list the involvement of proposed project team members for whom resumes have been submitted.
- 4) List subconsultants and specify their involvement on the project. List no more than five projects of similar complexity and magnitude undertaken by the subconsultant in the past five years and provide references and a phone number for each project.

5) The consultant may submit a brochure that provides any further information describing the firm's qualifications for this project; however it will be included in the maximum allowed page count.

5. Affirmation as to Form of Agreement: Provide a statement to the effect that the City Standard Consultant Agreement is acceptable to the Proposer or state exceptions taken. Please be advised that exceptions to Paragraphs 11 and 12 of the General Provisions will not be entertained and will serve to disqualify a proposer from further consideration.

The Agreement can be downloaded at:

<http://www.oakharbor.org/uploads/Consultant%20Contract%20-%20Hourly.pdf>

7. Level of Effort: The Consultant shall prepare a separate Level of Effort spreadsheet that contains line items for each major task and subtask to be performed with the estimated man hours per classification to be expended in that effort

SELECTION PROCEDURE.

Subsequent to the deadline for acceptance of proposals, the City will evaluate the Technical Proposal and will determine rankings based upon materials submitted and oral interviews (if deemed necessary by the City) using the selection criteria and weights indicated below. The City will contact the firm with the highest ranked Technical Proposal. The level of effort will be used as a basis to negotiate a contract fee. If an agreement cannot be reached with the top ranked firm, the City will contact the firm with the next ranked Technical Proposal and attempt to negotiate with that firm. The process will be repeated until an agreement is reached. Aside from eventually announcing the successful consultant, the rankings and levels of effort will be kept confidential.

SELECTION CRITERIA

The Consulting Team selected for this project should have demonstrated experience in wastewater treatment facility design including site selection, regulatory compliance and preparation of Facility Plans in compliance with WAC 173-240-060 and 40 CFR 35.917-1. Selection shall be based on the following:

- 1) Consultant's understanding of the City's desires and general approach to the project as demonstrated in the project description and scope of work. (up to 20 Points))
- 2) Completeness of the work elements included in the Proposal. (up to 20 Points)
- 3). Consultant's experience with projects of similar complexity and function. (up to 20 Points))

4) Qualifications of the Consultant's staff being assigned to this project. (up to 20 Points)

5) Demonstrated ability of the Consultant to perform high quality work, to control costs and to meet schedules. (up to 20 Points)

Should the City determine that interviews are desirable, up to 25 additional points may be granted based on those interviews.

Ranking will on a total point basis.

SUBMITTAL DEADLINE

Six copies of the Technical Proposal and Level of Effort should be forwarded to the attention of Mr. Russ Pabarcus, P.E., Project Manager at the following address by 5:00 p.m. on January 8, 2008.

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Any proposal received after the specified date and time will automatically be rejected and will not receive any further consideration by the City. Postmarks will not be accepted.

PROPOSAL CONTACT PERSON

All questions regarding this solicitation should be directed to Russ Pabarcus, Civil Engineer at (360) 279 -4520 or rpabarcus@oakharbor.org.

**ADDENDUM 1 TO CITY OF OAK HARBOR REQUEST FOR PROPOSAL FOR
ENGINEERING SERVICES FOR WASTEWATER TREATMENT PLANT
PRELIMINARY ENGINEERING AND FACILITY PLAN**

BACKGROUND

The “required Environmental Documents” may include the formal NEPA process or the State Environmental Policy Act (SEPA) process.

An Environmental Assessment and Biological Assessment is likely to be needed as part of the NEPA process however an Environmental Impact Statement is not anticipated at this time.

Cultural Resource review consistent with Washington State Governor’s Executive order #05-05 will be required. Consideration of potential historic sites on Navy property will also be necessary.

PROPOSAL REQUIREMENTS

2. **Scope of Work:** Include the additional requirement for an initial “stakeholders” preplanning meeting to be conducted by the Consultant to identify environmental, permitting and coordination requirements that might result from site and process selection. At a minimum attendees should include the Army Corps of Engineers, State Department of Ecology, Island County, Puget Sound Partnership, City of Oak Harbor, NASWI Public Works and other agencies having environmental or permitting interests in the project. It is anticipated that the consultant would plan and facilitate this meeting as well as provide background information to participants and document outcomes or decisions.

Include effort to assist the City in a public outreach information and education program to inform the public consisting of elected officials, stakeholders, those residing near or using facilities near to potential sites, and the general public concerning the criteria being used and the potential effects of site selection and process decisions. This effort might include visits to exemplary facilities that demonstrate what this project might achieve.

- a) Potential Facility Location - Analysis of Potential facility locations should include an analysis of potential flood protection requirements. Flood protection will be included in the preliminary design and Facility Plan for the selected site if appropriate.

The “Train Wreck” site is generally described to be the area on the NASWI –Seaplane Base south of Pioneer way, east of Oak Harbor Bay, west of Crescent Harbor Bay and north of the Maylor Point housing area.

b) Public meetings – In addition to the three meetings with the general public it is anticipated that key personnel from the consultant team will be asked to attend three (3) council committee meetings, two (2) council workshops and two (2) city council meetings.

c) Project Financing Options - The City is in the process of finalizing a comprehensive utility cost of service rate study. The rate study analyzed revenues and expenditures as well as cost of service for various customer classes. For the purposes of this RFP, Consultant teams are to assume that as part of the funding strategy that City staff has assumed and included in the rate analysis a \$70million expenditure with a series 30 year bond repayments. The full \$70million in bond repayment would begin in 2018, one year after completion. Additional information related to the rate study is available the in minutes of the council workshop available in PDF format at (INSERT FILE LOCATION)

Given the significant impact to rate payers the City is anticipating pursuing all opportunities for funding sources that will lessen the impact of such a large capital expenditure.

Awareness or identification of the traditional funding sources (PWTR, SRF, bonds etc) or assistance to the City in completing applications for these types of funding sources will not be a major factor in the selection process. In addition, the City is not expecting that the consultant team will be the lead on pursuing additional funding sources.

Financial analysis or life cycle cost comparisons relating to the comparison of the differing sites, processes and all associated improvements will be a part of the initial scope of work and will be given consideration during the selection process. However, the ability or approach to addressing the direct impact to utility rates will not be given significant attention during the selection process.

d) Decision Process - The City Staff concept of the decision processes leading to submittal of a facility plan to the Department of Ecology is summarized below and in the attached project organization.

<u>Element</u>	<u>Responsibility</u>
<u>Gather information including input from</u>	<u>Consultant and City Technical Group</u>

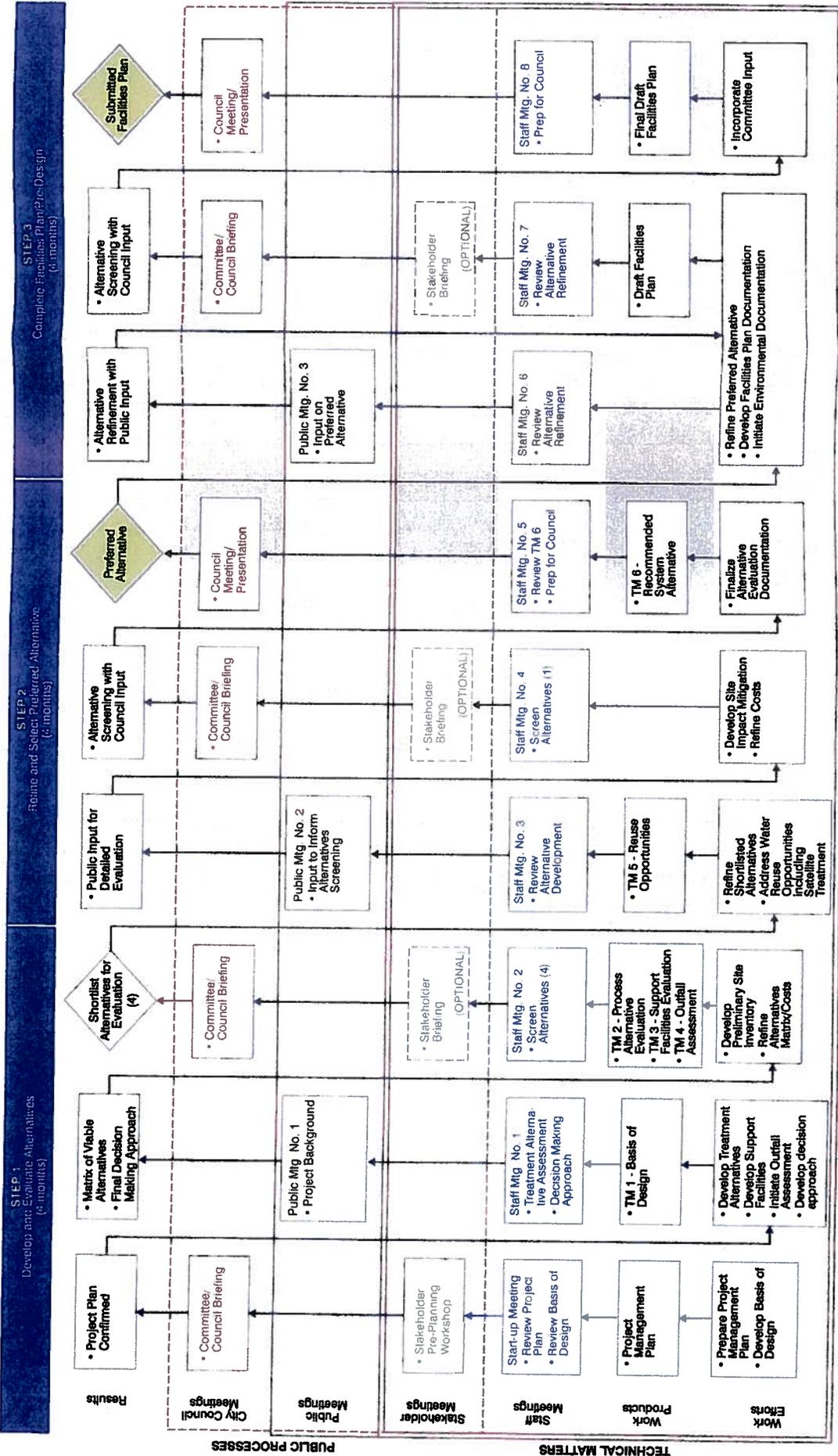
<u>stakeholders.</u>	
<u>Prepare large matrix of site and process options with attendant benefits and liabilities.</u>	<u>Consultant</u>
<u>Review by City Technical Group</u>	<u>City Technical Group</u>
<u>Present top 4 recommendations to City Council Public Works Committee</u>	<u>City Technical Group and consultant</u>
<u>Further analysis of top 4 recommendations</u>	<u>Consultant</u>
<u>Present to Council Standing Committee</u>	<u>City Technical Group and consultant</u>
<u>Revise as necessary</u>	<u>Consultant and City Technical Group</u>
<u>Present Options to Public</u>	<u>Consultant and City Technical Group</u>
<u>Revise based on Public input</u>	<u>Consultant and City Technical Group</u>
<u>Submit to City Council</u>	<u>City Technical Group</u>
<u>Decision</u>	<u>City Council</u>
<u>Finalize Preliminary Design & Facility Plan</u>	<u>Consultant</u>
<u>Authorization to Submit Facility Plan</u>	<u>City Council</u>

e) Add to the list of "standard elements":

"p) Plant Security and Chemical Safety"

3. **Schedule of Work:** The requirement for submission of a Facility Plan to the State Department of Ecology not later than one year after a Notice to Proceed is not absolute. If your firm considers that length of time to be unrealistic, provide what you believe to be a realistic schedule. Said schedule would be evaluated as part of Selection Criteria 5).

Preliminary Work Flow Diagram
Wastewater Treatment Plant Preliminary Design and Facilities Plan



Our three-step approach will complete this project within the 12-month time period, and provide Oak Harbor with the right decision for your community's future.

